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FEDERAL COMMUNICATIONS COMMISSION

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INDEX

	Page
Action Radio, Inc.; docket No. 19274 (F.C.C. 72R-251)	151
Administrative Law Judge; Amendment of sections 0.5(a)(9), 0.5(b)(4) and addition of new section 0.150 (F.C.C. 72-760)	155
Akron Telerama, Inc.; request for stay and petition for special relief filed by Scripps-Howard Broadcasting Co. (F.C.C. 72-827)	157
Alaska—Ship Station Licenses; Amendment of part 83 (F.C.C. 72-758)	159
Arnold Transit Co.; request for exemption from 50 watts carrier output power requirement of Regulation 1, annexed to Great Lakes Agreement and waiver section 83.542(c) (F.C.C. 72-753)	162
Capital City Communications, Inc.; docket No. 19067 (F.C.C. 72-801)	164
Capitol Broadcasting Corp., et al.; file Nos. BP-18323 and BP-18471 (F.C.C. 72-765)	177
Columbia Broadcasting System, Inc.; motion for declaratory ruling (F.C.C. 72-811)	181
Domestic Communication-Satellite Facilities; docket No. 16495 (F.C.C. 72-807)	184
Friendly Broadcasting Co.; docket No. 19412 (F.C.C. 72-802)	191
Hawaiian Telephone Co.; file Nos. P-C-7435-1, P-C-7435-1-A, and P-C-7435-1-A-1 (F.C.C. 72M-1036)	193
Health Clinics; docket No. 19576 (F.C.C. 72-756)	197
Home Service Broadcasting Corp., et al.; docket Nos. 18640 and 18641 (F.C.C. 72R-250)	200
Licensing and Operator Requirements; docket No. 19163 (F.C.C. 72-786)	202
Madeline Island Ferry Line, Inc.; file No. X-1105 (F.C.C. 72-806)	207
North American Broadcasting Co., Inc., et al.; docket Nos. 18310 and 18312 (F.C.C. 72D-42)	209
Operator Requirements; docket No. 19488 (F.C.C. 72-819)	211
Pacific Lutheran University, Inc.; file No. BMPED-876 (F.C.C. 72-797)	215
Prime Time Access Rule; concerning late-afternoon NCAA football games (F.C.C. 72-781)	218
RCA Global Communications, Inc.; proposed revision to tariff F.C.C. No. 58 (F.C.C. 72-800)	220
Espinoza, II, Reginaldo; docket No. 19208 (F.C.C. 72-804)	222
Repeater Stations; docket No. 18803 (F.C.C. 72-757)	225
Service Electric Cable TV, Inc.; docket No. 18923 (F.C.C. 72-785)	241
Southern Pacific Communications Co.; file No. 4532-C1-P-70, et al. (F.C.C. 72-808)	245
Suburban Broadcasting Corp.; file No. BMPCT-7159 (F.C.C. 72-769)	249
TV Table of Assignments; docket No. 19511 (F.C.C. 72-821)	251
Television Tuning; docket No. 19268 (F.C.C. 72-795)	253
Wagenvoord Broadcasting Co.; petition for reconsideration requesting a delay in payment of forfeiture (F.C.C. 72-823)	258
Warner Communications, Inc., et al.; request for temporary waiver of section 76.501 (F.C.C. 72-826)	260
Western Communications, Inc., et al.; docket Nos. 19519 and 19581 (F.C.C. 72-767)	266
WTAR Radio-TV Corp., et al.; docket Nos. 18791 and 18792 (F.C.C. 72-243)	269

F.C.C. 72R-251

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of ACTION RADIO, INC. For Renewal of License of Radio Station KTLK, Denver, Colo.	Docket No. 19274 File No. BR-1969

MEMORANDUM OPINION AND ORDER

(Adopted September 13, 1972; Released September 14, 1972)

BY THE REVIEW BOARD: BOARD MEMBER PINCOCK ABSENT.

1. Presently before the Review Board is an appeal from Examiner's Memorandum Opinion and Order denying motion to compel answers, filed March 29, 1972, by Action Radio, Inc. (Action).[1]

2. By Order and Notice of Apparent Liability, FCC 71-678, 36 FR 12640, released June 29, 1971, the Commission designated the renewal application of Action for hearing under issues to determine, *inter alia*, whether the licensee had engaged in various instances of misconduct in the operation of its facilities, and whether Action had made misrepresentations to the Commission's staff during an investigation of the alleged misconduct. The Broadcast Bureau subsequently issued a Bill of Particulars which set forth thirteen paragraphs describing instances of alleged misconduct on the part of Action. On January 27, 1972, Action served upon the Chief, Broadcast Bureau 279 interrogatories. The Bureau, in its "Answers and Objections to Interrogatories", answered in whole or in part ten of the interrogatories [2] and objected to the remaining 269 interrogatories. On February 15, 1972, Action filed a motion to compel answers, requesting the Examiner to compel the Broadcast Bureau to answer the 269 unanswered interrogatories and to give more complete answers to the ten interrogatories which the Bureau had answered. The Hearing Examiner, by Memorandum Opinion and Order, FCC 72M-276, released March 2, 1972, denied Action's motion. Pursuant to Section 1.301(b) of the Commission's Rules, the Examiner granted Action permission to appeal this order (Memorandum Opinion and Order, FCC 72M-372, released March 22, 1972.)

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[1] Also before the Board for consideration are: (a) Broadcast Bureau's opposition, filed April 10, 1972; and (b) reply, filed April 20, 1972, by Action.

[2] In response to the ten interrogatories the Bureau disclosed the names and addresses of all persons believed by the Bureau to have knowledge of relevant facts concerning paragraphs 1, 2, 4, 9, 10, 12, and 13 of the Bill of Particulars. In response to Action's motion to compel answers, the Bureau subsequently provided Action with the names and addresses of all persons believed by the Bureau to have knowledge of the relevant facts regarding paragraphs 3, 5, 7, 8, and 11 of the Bill of Particulars and copies of three documents which the Bureau regards as relevant to paragraphs 6 and 7 of the Bill of Particulars.

109-009—72——1

3. The Hearing Examiner denied Action's motion to compel answers, stating:

> *In toto*, the interrogatories seek information, to the most minute details, of what the Commission's investigation did and did not disclose and included numerous inquiries as to obviously immaterial and irrelevant matters most of which the licensee has full knowledge. This is not the purpose of discovery.

Thus, the Examiner reasoned, the interrogatories fall into four basic categories, none of which is discoverable.[3] Some interrogatories request information concerning matters within the licensee's knowledge without regard to whether or not these matters are properly subject to discovery; others inquire solely into the precise manner in which the Commission's investigation was conducted; others seek the sources of information developed in the Commission's investigation which led to the allegations contained in the Bill of Particulars; and lastly, other interrogatories inquire into how, from whom, when and where the Commission first learned of the matters in issue. The Broadcast Bureau has provided Action with the names of all parties it believes may have knowledge of relevant facts of the matters in issue as delineated by the entire Bill of Particulars, the Examiner noted; moreover, Commission personnel have no personal knowledge of these matters. The Examiner concluded, that Action may look to the names and locations of persons, provided by the Bureau, if the licensee believes that there are relevant facts of which it has no knowledge.

4. In its appeal, Action argues that even though Commission personnel may not be subject to discovery concerning the contents of Commission records, the Commission's discovery procedures are not intended to give Commission personnel "a position of unreasonable privilege."[4] Rather, according to the appellant, the Commission's Rules provide that interrogatories may be served upon Commission personnel to ascertain facts as to which they have personal knowledge or to obtain information as to the existence and general nature and description, custody and location of Commission records. In this connection, Action asserts, the discovery procedures permit the questioning of Commission personnel about the identity of persons having personal knowledge of the facts in issue and the general nature of the information such persons may be able to furnish. By refusing to compel answers to its interrogatories, Action alleges, the Examiner unduly limited Action's right to discovery solely to " 'the names of all persons believed to have personal knowledge of the matters in issue' that the Bureau, in its discretion, cares to divulge", even though this information was not the subject of specific interrogatories. Thus, appellant argues, it is not apprised of the bases for the allegations lodged against it and, as a result, is saddled with the burden of looking to each and every person the Bureau "believed" might have knowledge of the matters in issue. Neither the Congress nor the Commission, Action contends, intended that such a burden should be placed upon a party to a proceeding of this nature. Furthermore, Action argues,

[3] The Examiner noted that Action seeks the same data through the use of interrogatories that it sought by its request for access to the Commission's investigatory files. Action's request for records was denied by the Examiner's Memorandum Opinion and Order, FCC 72M–207, released February 15, 1972.

[4] Citing *Amendment of Part 1 of the Rules of Practice and Procedure To Provide for Discovery Procedures*, 11 FCC 2d 185, 11 RR 2d 1691 (1968).

the interrogatories, if properly answered, will demonstrate that certain of the allegations are unwarranted because of insufficient evidence.[5] Finally, appellant contends that the Bureau's compound and general objections were improper [6] and have prejudiced its appeal.

5. The Broadcast Bureau, in its opposition, maintains that the Hearing Examiner specifically and correctly detailed the improper nature of the bulk of Action's interrogatories and thus his decision should be affirmed.[7] Contrary to the appellant's assertions, the Bureau states, its personnel have no personal knowledge of the facts relevant to any of the issues in the proceeding.[8] Conceding that Bureau personnel do have personal knowledge of the facts regarding the manner in which the investigation of the matters at issue was conducted the Bureau nevertheless contends that such facts, according to clearly defined Commission policy, are neither relevant nor discoverable (citing Section 1.311(b)(4) of the Commission's Rules). More specifically, the Bureau alleges that the interrogatories designed to elicit answers concerning Action's cooperation with the Bureau are irrelevant and improper; in any event, the Bureau explains, Action is confusing willingness to cooperate with candor. Finally, the Bureau notes that in *Seaboard Broadcasting, Inc.*, 20 FCC 2d 659, 17 RR 2d 1021 (1969), the Review Board denied a similar appeal from an Examiner's refusal to compel answers to interrogatories, which sought extensive details as to what Commission investigators had been told by various persons.

6. In reply, Action alleges that the Bureau refused to respond to the specific interrogatories propounded by Action without invoking any restrictions on discovery. For example, appellant asserts, the Bureau merely states that it does not have to give the details of its investigation without explaining the reason for such refusal. In any event, Action contends, the Bureau does have personal knowledge of the source or sources of the allegations set forth in the Bill of Particulars and its investigation, even though it might not have direct personal knowledge of the events in question. Action then asserts that the instant request is easily distinguished from the request in *Seaboard Broadcasting Company, Inc., supra;* its interrogatories are specific and direct and in no instance do they request a general synopsis of the contents of a conversation. Lastly, by too narrowly construing the Commission's rules on discovery, the appellant alleges that the Examiner abused his discretion.[9]

[5] In this connection, Action argues that it should not be required to show at hearing that the Bureau failed to give it an opportunity to respond to certain allegations; rather, answers to the requested interrogatories would demonstrate that the Bureau's investigation was inadequate and thus that the charges of misrepresentation and lack of candor are unwarranted.

[6] Citing Section 1.323 of the Commission's Rules.

[7] In this connection the Bureau correctly notes that the Commission has stated its intention that discovery matters be supervised by the Presiding Examiner and that the Examiner's decisions are not to be overturned unless they are arbitrary or constitute an abuse of discretion. *Florida-Georgia Television Company, Inc.*, FCC 69–256 —, 15 RR 2d 1028 (1969).

[8] In support of this proposition, the Bureau briefly summarizes the issues in the proceeding as follows: The issues concern the conduct of four specific contests or promotions, the licensee's supervision of contests and promotions, whether fictitious weather temperatures were broadcast by the licensee, whether the transmitter was left unattended and whether the licensee was left unattended and whether the licensee was candid in its dealings with the Commission.

[9] In this connection, Action attempts to distinguish *Florida-Georgia Television Company, Inc., supra*, because in that proceeding the Hearing Examiner denied discovery which was both burdensome and unreasonable.

7. The Review Board is of the view that the Examiner correctly and carefully characterized the disputed interrogatories as proscribed inquiries into the substance and content of the Bureau's investigation, and that Action has failed to provide an adequate basis for overturning the Examiner's adverse ruling. There is no indication that Action is attempting to seek facts as to which the investigators have personal knowledge independent of the content of their investigation. The Commission clearly stated in its *Report and Order on Discovery Procedures*, *supra*, that "The purpose of discovery is to find the potential witness and to determine what he knows-not what he has related to the Commission's investigator." [10] In accordance with this, the Bureau has provided the names of all persons believed to have personal knowledge of the matters in issue as delineated by the Bill of Particulars. Action has been apprised of the nature of the possible allegations lodged against it; it has also been supplied with the names and locations of all potential witnesses to whom it can look if it is believed that there are relevant facts of which it has no knowledge. Thus, Action has the wherewithall to proceed with its case in full. It may question those persons whom it believes will provide it with relevant facts; secondly, if the Commission personnel are called upon to testify during the hearing, Action is both entitled and prepared to cross examine such investigators concerning the basis of their conclusions and by using proper Commission procedures, may request production of Commission files; moreover, Action may call upon its own witnesses to controvert the testimony of the investigators. Action's fear of unfounded allegations is allayed, therefore, because it has the means at its command to show that the Bill of Particulars is unfounded, if such is the case, during the hearing.

8. Accordingly, IT IS ORDERED, That the appeal from Examiner's Memorandum Opinion and Order denying motion to compel answers, filed March 29, 1972, by Action Radio, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[10] Also see Section 1.311 (b) (4) which provides in pertinent part:
. . . Commission personnel may be questioned generally by written interrogatories regarding the existence, description, nature, custody, condition and location of relevant documents and things regarding the identity and location of persons having knowledge of relevant facts, and may otherwise only be examined regarding facts of the case as to which they have direct personal knowledge.

F.C.C. 72-760

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF §§ 0.5(a) (9), 0.5(b) (4), AND THE ADDITION OF A NEW § 0.150 IN THE COMMISSION'S RULES AND REGULATIONS

ORDER

(Adopted August 29, 1972; Released August 30, 1972)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND REID ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The amendments set forth in the attached Appendix authorize a change in the title of "Hearing Examiner" to "Administrative Law Judge."

2. Authority for the amendments in the Appendix is set out in Section 5 CFR 930 (Rules and Regulations of the United States Civil Service Commission), Sections 4(i), 5(d) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(d) and 303(r). As the amendments relate to matters of internal Commission organization and procedure, the prior notice and public procedure provisions of 5 U.S.C. 553 are inapplicable.

3. In view of the foregoing, IT IS ORDERED, effective September 6, 1972, That Part O of the Rules and Regulations is amended as set forth in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part O of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 0.5(a) (9) is revised to read as follows:

§ 0.5 *General description of Commission organization and operations.*

(a) * * *
(9) Office of Administrative Law Judges.

* * * * * * *

2. Section 0.5(b) (4) is revised to read as follows:
(b) * * *

(4) ***Staff units which exercise responsibility for the decision of hearing cases.*** The Office of Administrative Law Judges, the Review Board, and the Office of Opinions and Review exercise responsibility for the decision of hearing cases. The Administrative Law Judges preside over hearing cases and issue initial decisions. In most cases, initial decisions are subject to review by the Review Board, which is a permanent body composed of three or more senior Commission employees. Initial decisions may also be reviewed by one or more Commissioners designated by the Commission. In such cases, the Board or designated Commissioner(s) issues a final decision, which is subject to possible review by the Commission. In other cases, the initial decision is reviewed directly by the Commission en banc. The Office of Opinions and Review assists and advises the Commission, and any Commissioner(s) designated to review an initial decision, in the decision of cases which come before them.

* * * * * * *

F.C.C. 72-827

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
AKRON TELERAMA, INC., AKRON, TALLMADGE, STOW, CUYAHOGA FALLS, AND BARBERTON, OHIO
Request For Stay

MEMORANDUM OPINION AND ORDER

(Adopted September 13, 1972; Released September 18, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, REID, AND WILEY ABSENT.

1. On September 5, 1972, Scripps-Howard Broadcasting Company, licensee of Television Broadcast Station WEWS, Channel 5, Cleveland, Ohio, filed both a "Request for Stay" and a "Petition for Special Relief" directed against Akron Telerama, Inc., operator of cable television systems at Akron, Tallmadge, Stow, Cuyahoga Falls, and Barberton, Ohio. In view of the urgency of the situation,[1] we rule on the "Request for Stay" without awaiting responsive pleadings.

2. Akron Telerama informally advised Scripps-Howard that it intends shortly to rearrange the order in which it carries stations on the above-captioned cable television systems, and *inter alia* to move Station WEWS from Channel 4 to Channel 5 on these systems. Scripps-Howard—concerned that on channel carriage of its signal could result in signal degradation—opposes the proposed change.

3. The paucity of information prevents definitive action. Nonetheless, Scripps-Howard's allegations strongly suggest that the proposed change could violate at least the spirit (and probably the letter) of Section 76.55(a)(1) of the Commission's Rules.[2] In these circumstances, and noting the fact that this dispute is a case of first impression to the extent that it is concerned with channel assignments on a cable television system, issuance of the requested stay seems appropriate.

In view of the foregoing, the Commission finds that grant of Scripps-Howard's "Request for Stay" would be consistent with the public interest.

---

[1] Akron Telerama is not required to obtain a certificate of compliance before making its proposed change; consequently, we must act in order to maintain the status quo.

[2] Section 76.55(a)(1) of the Rules provides that:
"The signal shall be carried without material degradation in quality (within the limitations imposed by the technical state of the art), and, where applicable, in accordance with the technical standards of Subpart K of this part;"

Accordingly, IT IS ORDERED, That Akron Telerama, Inc., IS DIRECTED TO MAINTAIN the same alignment of stations to channels as existed September 5, 1972, on its cable television systems at Akron, Tallmadge, Stow, Cuyahoga Falls, and Barberton, Ohio.

IT IS FURTHER ORDERED, That Scripps-Howard Broadcasting Company's "Request for Stay" filed September 5, 1972, directed against Akron Telerama, Inc., IS GRANTED to the extent indicated above and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-758

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PART 83 OF THE RULES—TO PROVIDE RELAXATION IN REGARD TO RENEWAL AND LICENSING OF SHIP STATION LICENSES ABOARD VESSELS REGISTERED IN THE STATE OF ALASKA, OR DOCUMENTED VESSELS WITH A HOME PORT IN ALASKA.

ORDER

(Adopted August 29, 1972; Released August 31, 1972)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND REID ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission held public meetings in four cities in Southeastern Alaska during the period May 13–16, 1972. These meetings were conducted for two primary reasons: (1) To explain the objectives and requirements of the Commission's maritime mobile service regulations, adopted in the proceeding in Docket No. 18632 and released on February 11, 1972; and (2) to obtain at first hand the views, comments and/or objections of these boating communities to that part of the regulations which required, in the case of new installations, the fitting of very high frequency (VHF) radiotelephony equipment operating on frequencies in the band 156–162 MHz, as a prerequisite condition to eligibility for licensing of SSB radiotelephony equipment operating on frequencies in the bands between 2 and 23 MHz.

2. The views expressed in these meetings were that VHF should not, under conditions currently existing in Alaska, be required as a prerequisite to the licensing of SSB. As described, the conditions currently existing in Alaska are as follows:

A. RCA Alascom, the operator of public coast stations in Alaska, currently provides no VHF service. RCA Alascom is currently conducting studies and planning which looks to the provision of large area VHF coverage in various areas of Alaska. Those studies are expected to be completed later this year and, under current planning, are expected to result in the installation of VHF public coast stations during 1973.

B. The only VHF service provided at coast stations in Alaska is that provided at three or four locations by the USCG. These installations were not intended, designed, or located to provide a large area service. They provide, as intended, a local area short distance service. The USCG will, however, install within the next six months a high elevation VHF station at Anchorage, Alaska, to provide large area coverage. While it is the USCG policy to install VHF around the periphery of the 48 contiguous states, that policy does not yet include Alaska. The plans of the USCG in regard to installation of VHF in Alaska have not been finalized.

C. With regard to the use of VHF for intership communications in Southeastern Alaska within the island area, the following factors have a bearing on the configuration of these islands, that is, their height and foliage, and the twisting nature of the waterways between these islands, limit the useful communication range of VHF for intership communications; and, in contrast to fishing operations in other areas, fishing vessels in Alaska are not operated in fleets. As described, fishing vessels operating "inside" (as contrasted to "outside", that is, in the Pacific Ocean) are operated as separate units and are no way in proximity to other such vessels. Thus, taking into account the island configuration, the use of VHF for intership communications was stated to be of limited or negligible benefit.

3. On the basis of the conditions set forth in paragraphs 2A, B and C, above, it appears that by January 1, 1974, there will be substantial VHF public coast service available in Alaska and that it is reasonable during the intervening period to suspend the requirement that the vessels in Alaska be fitted with VHF as a prerequisite to installation of 2 MHz SSB. Accordingly, section 83.351 (c) (3) (ii) of Part 83 of the Rules is amended as set forth in the attached Appendix.

4. In each of the meetings at the four cities it was stated that a conclusion, bearing on the matter of renewal of 2 MHz DSB ship station licenses which expire after January 1, 1972, had been reached at a public hearing [1] held at Sitka, Alaska, on April 11, 1972. This conclusion was widely publicized and accepted by many in Alaska. Specifically, it was concluded that any of this type license would, if it expired after January 1, 1972, fall in the category of a new ship station; as a new ship station, it would be necessary to fit the vessel with VHF before it could be fitted with SSB. This conclusion was in error.

5. On the basis of information obtained at the above mentioned Alaska meetings, there were, during the calendar year 1971, a significant number of licensees of DSB ship stations in Alaska who could have but did not file for renewal of those licenses. The reasons for not filing for renewal varies from inadvertence to misunderstanding of the Commission's Report and Order. The Commission is of the view that an extension of the period for renewal of DSB authorizations in this category would not adversely affect the DSB to SSB conversion program and would otherwise be in the public interest. Accordingly, as set forth in the attached Appendix, we are permitting renewal of this category of authorization where the license expired after January 1, 1971. In order that this arrangement will be terminated in an orderly manner, such applications for renewal will not be granted if filed after January 1, 1973.

6. Because the amendment adopted herein relieve a restriction and this restriction is currently affecting licenses to their detriment compliance with the prior notice and procedure provision of 5 USC § 553 is impractical and the effective date provision of that section is not applicable. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 4(i) and 303 (e), (f) and (r) of the

[1] The public hearing was convened by the Alaska Public Utilities Commission (APUC) to obtain information in regard to the closing of the public coast station at Sitka, Alaska, operated by RCA Alascom. Since renewal of ship station licenses was not within the purview of that hearing, we deduce that this conclusion was by those present and not by the APUC.

Communications Act of 1934, as amended, that effective September 8, 1972, Part 83 of the Commission's Rules is amended as set forth in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 83, Stations on Shipboard in the Maritime Services, is amended as follows:

1. In section 83.139, a new subparagraph (c) (3) is added to read as follows:

§ 83.139 Acceptability of transmitters for licensing.

* * * * * * *

(c) * * *

(3) Stations aboard vessels registered in the State of Alaska, or documented vessels with a home port in Alaska, which employ a DSB transmitter under a ship station license which expires or expired during the period January 1, 1971, to January 1, 1973, may be renewed for use until January 1, 1977, PROVIDED, That an application for renewal of the ship station license is submitted, and PROVIDED, FURTHER, That the license has not been:

(i) cancelled at the request of the licensee; or

(ii) Revoked by action of the Commission.

* * * * * * *

2. In section 83.351, a new footnote is added following paragraph (c) (3) (i) to read as follows:

§ 83.351 Frequencies available.

* * * * * * *

(c) (3) (i) * * *

Note: The requirement set forth in paragraph (c) (3) (i) of this section is applicable on January 1, 1974, to vessels bearing Alaska registration and documented vessels with a home port in Alaska.

* * * * * * *

F.C.C. 72-753

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
APPLICATION FOR EXEMPTION FROM CERTAIN PROVISIONS OF REGULATION 1, ANNEXED TO THE GREAT LAKES RADIO AGREEMENT AND WAIVER OF THE REQUIREMENTS OF SECTION 83.542(c) OF THE COMMISSION'S RULES FOR THE U.S. PASSENGER VESSEL "HURON" WHEN NAVIGATED IN THE STRAITS OF MACKINAC, MICH.

MEMORANDUM OPINION AND ORDER

(Adopted August 29, 1972; Released September 8, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONERS H. REX LEE AND REID ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission has received a request for exemption from the 50 watts carrier output power requirement of Regulation 1, annexed to the Great Lakes Radio Agreement and waiver of the same requirement contained in Section 83.542(c) of the Commission's Rules filed by Arnold Transit Company on behalf of the United States passenger vessel HURON, official number 269888.

2. Regulation 1, annexed to the Great Lakes Radio Agrement requires that all passenger carrying vessels of over 65 feet in length be equipped with a radiotelephone transmitter with a carrier output power of 50 watts and the Commission, in Section 83.542(c), established the same requirement. The HURON is being lengthened to approximately 91 feet, and after reconstruction will be subject to the Great Lakes Radio Agreement.

3. Arnold Transit Company has requested relief to permit use of the APELCO AE-50 MA double sideband radiotelephone transmitter, aboard the United States passenger vessel HURON, for compliance with the Great Lakes Radio Agreement and thereby avoid the installation of new single sideband equipment for this purpose.

4. Arnold Transit Company submits the following information in support of its request:

a. the vessel is operated and licensed to operate only in the Straits of Mackinac, operating between Mackinac Island and St. Ignace and Mackinac Island and Mackinaw City, all in the state of Michigan, during the spring, summer and fall seasons;

b. the route does not exceed three and one-half miles from shore at any time and does not exceed 32 minutes per voyage; and

c. the vessel is in communication range of other vessels in the area and the U.S. Coast Guard station at St. Ignace, Michigan at all times.

5. Regulation 1, annexed to the Great Lakes Radio Agreement and Section 83.542(c) of the Commission's Rules requires that the radiotelephone transmitter have an output of at least 50 watts carrier power, which gives an effective range of 50 miles over Great Lakes waters. The route of the vessel is at all times within 45 miles of public coast station WLC, Rogers City, Michigan and 7 miles of the United States Coast Guard station at St. Ignace, Michigan. In addition, there are United States Coast Guard stations at Sault Sainte Marie, Michigan and a Canadian public coast station at Sault Sainte Marie, Ontario, Canada within 41 miles of the vessel.

6. The radiotelephone transmitter installed on the vessel has a rated carrier power of 36 watts. On the basis of 36 watts carrier output power as compared to the 50 watts required by the Great Lakes Radio Agreement and the Commission's Rules, a reduction of approximately 8% in the ground wave communication range would be expected. This reduction will leave the vessel with an effective communications range of 46 miles which is sufficient for the routes traveled. In addition, we do not feel that this reduction will adversely affect the safety benefits to be derived from the HURON as a potential lifeboat for other ships. If relief were not granted, the HURON would be required to install an SSB radiotelephone which may become obsolete on the Great Lakes in the near future because consideration is being given to establishing VHF as the required system for safety on the Great Lakes. We find, therefore, that sufficient justification exists in this case to grant the waiver requested.

7. Article 6 of the Great Lakes Radio Agreement authorizes the Commission to grant exemptions, for a period of up to one year, from the provisions of Articles 7, 8, and 9 if it considers that the conditions of the voyage affecting safety, the maximum distance of the vessel from shore, the length of the voyage, and the absence of general navigation hazards are such as to render full application of Articles 7, 8, and 9 unreasonable or unnecessary.

8. Accordingly, IT IS ORDERED, That the United States passenger vessel HURON, Official Number 269888, be exempt from the 50 watt carrier output power requirement of Regulation 1, annexed to the Great Lakes Radio Agreement and the same requirements of Section 83.542(c) of the Commission's Rules, are waived when navigated on voyages in the Straits of Mackinac between Mackinac Island, Michigan and St. Ignace, Michigan, and between Mackinac Island, Michigan and Mackinaw City, Michigan for a period beginning on the date of this order and continuing for a period of one year: Provided, That the vessel is equipped with a radiotelephone transmitter with a rated carrier output of at least 36 watts and a continuous watch is maintained on 2182 kHz while the vessel is being navigated.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72–801

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CAPITAL CITY COMMUNICATIONS, INC. For Renewal of License of Radio Station WLUX, Baton Rouge, La.	Docket No. 19067 File No. BR–4266

APPEARANCES

Vincent A. Pepper and *Mark S. Fowler* (Smith & Pepper) on behalf of Erwin A. LaRose, Receiver for the bankrupt estate of Capital City Communications, Inc.; and *Thomas B. Fitzpatrick* and *John T. Kelly* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted September 13, 1972; Released September 20, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID ABSENT.

1. The application for renewal of license of standard broadcast station WLUX at Baton Rouge, Louisiana, was filed on March 3, 1970, by Capital City Communications, Inc., to which the station license had been assigned with Commission approval in September, 1967. By our *Order and Notice of Apparent Liability* (FCC 70–1140, released October 27, 1970) we designated the renewal application for hearing on the following issues:

(1) To determine whether the license for Radio Station WLUX was transferred, assigned or disposed of, by transfer of control of applicant corporation, without a finding by the Commission that the public interest, convenience and necessity would be served thereby in violation of Section 310(b) of the Communications Act of 1934, as amended.

(2) To determine whether applicant filed with the Commission contracts relating to ownership or control of applicant corporation, as required by Section 1.613(b) of the Commission's Rules.

(3) To determine whether applicant filed timely and accurate Ownership Reports (FCC Form 323) with the Commission, as required by Section 1.615 of the Commission's Rules.

(4) To determine whether the routine operation of the transmitter of Radio Station WLUX was performed by a person who held the radio operator license required by Section 73.93 of the Commission's Rules.

(5) To determine whether the operating logs for Radio Station WLUX were maintained by a person competent to do so, as required by Sections 73.111 and 73.113 of the Commission's Rules.

(6) To determine whether applicant, through its officers, directors or employees, made misrepresentations to the Commission or was lacking in candor.

(7) To determine the financial arrangements under which Station WLUX has been and will be operated.

(8) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether applicant possesses the requisite qualifications to be and to remain a licensee of the Commission.

(9) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the grant of the captioned application would serve the public interest, convenience and necessity.

We further provided therein that if denial of renewal were not deemed warranted, the hearing examiner should determine whether the issuance of a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, in the sum of $10,000 or some lesser amount was warranted.

2. Thereafter, Capital City was adjudicated a bankrupt and Erwin A. LaRose was appointed Receiver of the bankrupt estate of the corporation. An application for involuntary assignment of license to the Receiver was thereafter approved by the Commission (File No. BAL–7281). The Receiver then filed with the Commission a petition to have the hearing terminated and to have approved an assignment of license to United Broadcast Industries, Inc., the purchaser of the assets of the bankrupt corporation, under the principle of *Second Thursday Corporation*, 22 FCC 2d 515 (1970). The pertinent details of that application have been set forth in our Memorandum Opinion and Order, 33 FCC 2d 703, released February 23, 1972, and need not be repeated here. For our purposes, it is sufficient to note that the requested relief was denied as inconsistent with the public interest because alleged wrongdoers would receive a substantial benefit if the renewal and assignment of license of WLUX were approved. Reconsideration of that decision was denied. FCC 72–378, 34 FCC 2d 685, released May 1, 1972.

3. On March 22, 1972, the Receiver filed a waiver of hearing pursuant to Section 1.603 of the Rules [1] together with a request for oral argument. Bases for the waiver are the asserted unavailability to the Receiver of the financial resources to participate in a hearing and the lack of sufficient information concerning the merits of the charges against the principals of Capital City. In a pleading filed March 29, 1972, the Bureau advised that it would interpose no objection to the waiver. Pursuant to Commission authorization, the Bureau submitted on May 19, 1972, detailed comments supported by documentary evidence concerning the issues designated for hearing and the acts of misconduct outlined in the Bill of Particulars which previously had been filed on November 25, 1970. A response to these comments was tendered for filing by the Receiver on June 30, 1972 together with a petition for leave to file the pleading. No objection to the filing of the Receiver's pleading has been submitted and we conclude that the public interest will be served by a grant of the petition for leave to file and accepting the tendered pleading so that our final decision is predi-

[1] Section 1.603 provides, in pertinent part:

(a) In the case of any broadcast applications designated for hearing, the parties may request the Commission to grant or deny an application upon the basis of the information contained in the applications and other papers specified in paragraph (b) of this section, without the presentation of oral testimony. . . . Upon the receipt of waivers from all parties to a proceeding, the Commission will decide whether the case is an appropriate one for determination without the presentation of oral testimony.

cated on all of the available information. A reply was filed by the Broadcast Bureau on July 7, 1972.

4. The first question to be determined is whether a disposition on the merits is possible without the presentation of oral testimony. On the basis of our review of the pleadings and documents submitted in support thereof we conclude that sufficient information is now before us to enable us to dispose of this matter without such testimony. In reaching this determination, we have taken into consideration the detailed comments of the Bureau, the information contained in the records on file with the Commission, and the statement of the Receiver that for the purpose of this proceeding "he admits it [the information submitted by the Bureau] to be true and correct, and does not controvert any of the exhibition evidence submitted by the Bureau. The acts of misconduct charged by the Bureau are therefore considered as established. The dispositive question remaining to be decided is whether such misconduct warrants denial of renewal; or whether, in light of any mitigating circumstances advanced by the Receiver, the public interest would be served by favorable action on the renewal and assignment of license applications, either with or without the imposition of a forfeiture.

5. An application for assignment of station license from KCIL, Inc. to Capital City was filed on July 21, 1967. Therein it was alleged that 900 shares of no par value stock had been issued and was held (not merely subscribed) by the persons named in the numbers and percentages of voting stock set forth below:

	Shares [1]	Percent
John W. Harding	255	28.5
Charles K. Winstanley	198	22.0
George H. Jaspert	99	11.0
Gordon C. Ogden	99	11.0
John P. Smith	50	5.5
Nealon Stracener	50	5.5
Rudolph Ward	149	16.5
Total	900	100

[1] Authorized, 1,000 shares, no-par value; issued, 900 shares.

6. The application was executed on July 19, 1967, and it was signed on behalf of Capital City by Charles K. Winstanley as vice-president. Existing capital was shown as $80,000 with additional financing to be obtained through a $65,000 loan from a bank and deferred payments to the seller of $100,000. Thereafter, in response to a communication from the Commission, the application was amended on September 13, 1967, by an agreement of the seven stockholders to sign a note for an additional $20,000 if necessary to meet operating expenses during the first year of operation. The agreement was supported by a commitment from the Capital Bank & Trust Company which had also agreed to lend the $65,000 referred to in the application.

7. The application for assignment (BAL–6126) was approved by the Commission on September 14, 1967, and the transfer of ownership was consummated on September 19, 1967. An Ownership Report

(FCC Form 323) was filed by Capital City on November 1, 1967, which represented that as of September 19, 1967, the issued stock was owned as set forth above. That document was signed by John W. Harding as president of Capital City.

8. According to the stock record book of Capital City, however, no stock was issued until October 17, 1967, and the number of shares issued and the proportion of stock interest held by certain shareholders were not as represented in the assignment application and the Ownership Report. The total number of issued and outstanding shares was 778 rather than 900,[2] and Harding's 255 shares amounted to a 33% rather than a 25% interest. The holdings of other principals were shown on the corporate records as follows: Winstanley's 198 shares constituted a 26% interest; Jaspert was shown as the owner of 149 rather than 99 shares which represented a 19% interest; Ogden held only 50 shares amounting to a 6% interest; Smith purchased only 25 shares (3%); Stracener's stock purchase (51 shares) amounted to a 7% interest; and Ward purchased only 50 shares for a 6% interest. Other evidence establishes that the amounts paid into the corporation were not as represented in the Ownership Report. Thus, Ogden paid $5,000 for his shares rather than the $10,000 alleged in the Ownership Report; Smith actually paid $2,500 rather than $5,000; and Ward paid $5,000 instead of $15,000. Although the FCC Form 323 Ownership Report specifically requires that a full explanation be made if the consideration for stock is other than cash, it now appears that Winstanley received at least a portion of his stock (later corrected to show that he held only 90 shares, not 198) for organizational services rendered and this information was not disclosed. Manifestly, the stockholders knew the amounts of their contributions to the corporation, and the number of shares issued and the proportionate ownership interest of each as reflected on the corporate books on October 17, 1967; and they cannot avoid their obligation to file accurate and up-to-date information by implying that the report is accurate "as of September 19, 1967"—which, in any event, it wasn't—when substantial discrepancies exist between the true facts and the information contained in the Ownership Report on the date when it was filed with the Commission. Consequently, we find that in the assignment application Capital City misrepresented to the Commission that stock had been issued when in fact it had not been. We further find that in the November, 1967, Ownership Report Capital City misrepresented the number of shares of corporate stock issued, the number of shares issued to each of the licensee's principals, and the amount paid by several of the principals for their stock.

9. On or about May 1, 1968, John W. Harding, president and principal stockholder of Capital City, contracted to sell his 255 shares of stock to Robert G. Watson, the then station manager of WLUX, and

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[2] The value assigned, to each share of stock in the Ownership Report was $88.89. Since 122 less shares were issued than represented, it may be that the amount paid for the stock was less by $10,000 than represented to the Commission. Since the Commission was concerned with the sufficiency of Capital City's resources to meet its first year's operating expenses, that $10,000 difference would be a material matter. However, the failure of the Report to reflect the true number of shares issued precluded the Commission from determining whether further inquiry was necessary.

109-009—72——2

Watson delivered to Harding a check dated May 1, 1968, in the sum of $30,000 pursuant to the agreement. Watson insists that the check was given merely as evidence of the agreement but Harding asserts that he understood the transaction as payment for the stock. The check was never honored by the bank on which it was drawn because of insufficient funds, and the sum was never paid. This conflict is not of decisional significance since Harding did in fact endorse his stock certificate to show an assignment of 250 shares to Watson and 5 shares to Capital City; and new stock certificates were issued on August 5, 1968, which showed Watson as the registered holder of 253 shares, and William J. Carrigan as the owner of the two remaining shares.[3] The following additional stock acquisitions and changes are disclosed by the corporate records as of August 5, 1968: Carrigan acquired an additional 8 shares; Jaspert surrendered his certificate for 149 shares, received a certificate for 100 shares in lieu thereof, and another certificate for 10 shares; Winstanley surrendered his certificate for 198 shares and received a certificate for 90 shares in lieu thereof; Durwood Gully acquired 10 shares; Smith acquired 10 shares; and Katherine Davis Nelson[4] acquired 50 shares.[5] The Ownership Report, executed on June 12, 1968, by Robert G. Watson as president of the licensee and filed on June 17, 1968, represented the corporate stock holdings as follows:

	Shares	Percent
Watson	255	28.50
Winstanley	198	22.00
Jaspert	109	12.00
Ogden	49	5.50
Smith	40	4.44
Stracener	50	5.56
Ward	89	9.80
Carrigan	50	5.56
Gully	10	1.10
Nelson	50	5.56
Total	900	100.02

10. Thus, it can be seen that there were substantial differences between the data submitted in the Report and the licensee's stock record book. In some instances the changes which were not recorded on the stock certificates until August 5, 1968 were reflected in the Ownership Report and in some instances they were not. There is no record support for the reported 5.56% ownership interest (50 shares) by Carrigan as of this date. Also, a divergence exists between the total number of shares issued and outstanding as reflected in each. The Report did

[3] Like certificates as to these transactions had been issued on June 12, 1968, but they were marked "Defective" and "Not Properly Issued." Apparently the August 5, 1968, certificates replaced these defective ones.

[4] The stock was issued in the name of Davis but the stockholder is now married to George Nelson.

[5] The transactions involving Carrigan, Jaspert, Gully, Smith, and Nelson actually occurred between February and April, 1968, according to the Bureau. On February 13, 1968, Katherine Davis Nelson paid $5,000 to the corporate licensee for 33⅓ shares of stock and received a receipt signed by Watson as sales manager, and the business manager, Billy Bollinger, in lieu of a stock certificate which was to be issued at a later date. In a document dated May 21, 1968, signed by Harding as president and by Watson, the corporation agreed to record 50 shares of stock in Nelson's name for $6,000 received from her.

disclose, however, that Watson had replaced Harding as president and Ward had replaced Winstanley as vice-president. These discrepancies may have been due at least in part to slipshod record keeping and negligence rather than an affirmative intent to misrepresent. For example, some of the stock transfers which occurred between February and May, 1968, including the substantial stock interest acquired by Watson from Harding, and the fact that Watson had become the corporate president, were disclosed in the June, 1968, Ownership Report but were not reflected in the corporate records until August, 1968. Since no unauthorized transfer of control occurred prior to the filing of the said Report, there appears to be no motive for concealing the true situation from the Commission, and we find no intent to mislead the Commission. Nevertheless we do find that Capital City was guilty of carelessness and negligence in the preparation and submission of this Report, and that such negligence must be taken into account in determining whether a renewal of license is in the public interest.

11. Other failures properly to report matters to the Commission likewise appear to be the result of carelessness and negligence. Watson endorsed a $4,000 note executed by Harding on October 2, 1967, to the Capital Bank & Trust Company and he (Watson) pledged as security 253 shares of stock. As previously noted, according to the licensee's stock record book, this stock was not issued until August 5, 1968. Manifestly, the principals of Capital City were extremely lax in recording transfers of corporate stock and they failed in their obligation to report to the Commission the pledge of the stock to the bank and the agreement between Harding and Watson for the transfer of ownership of these shares of stock. With respect to the failure to report the pledge of all the corporate stock for the $65,000 loan from Capital Bank & Trust Company as established by the evidence, we consider in mitigation the fact that in the 1967 assignment application the Bank commitment expressly stated that the loan would be "secured by all of the stock of the corporation and the personal endorsements" of five named stockholders. Since the Commission was placed on notice of the proposed pledge, the failure to submit a report that such action was taken will not be accorded significant weight.

12. Some of the transfers of stock interests which thereafter occurred, however, raise substantial doubts concerning the character qualifications of Capital City's principals. On June 27, 1968, Winstanley agreed to sell 90 shares of stock to William J. Carrigan for $125.00 per share. Watson and another person signed the document as witnesses. This agreement was canceled by mutual consent on August 19, 1968, but on that date pursuant to a sale and transfer agreement signed by Winstanley, 58 of his shares were transferred on the corporate records to Carrigan and 32 shares to Ward. Consequently on August 19, 1968, an unauthorized transfer of control in violation of Section 310(b) of the Communications Act was consummated. Based on the corporate records as of August 5, 1968, a total of 709 shares were issued and outstanding of which 386 shares (Winstanley, 90; Jaspert, 110; Ogden, 50; Smith, 35; Stracener, 51; and Ward, 50) or 54.4% were owned by the original stockholders whereas only 323 shares (Wat-

son, 253; Carrigan, 10; Gully, 10; and Nelson, 50) or 45.6% was owned by new stockholders.[6] However, with Winstanley and Harding no longer stockholders and with Carrigan holding 68 rather than 10 shares, control shifted to the new stockholders on August 19, 1968. At that time the new stockholders owned 381 shares or 53.7% of the 709 isued and outstanding shares. No request for authorization to transfer corporate control was ever submitted to, and no authorization was received from, the Commission.

13. Despite these very significant changes on August 19, 1968, Capital City filed on November 6, 1968, an Ownership Report executed by Watson on October 25, 1968 which indicated 709 shares issued and outstanding to the following stockholders:

	Shares
Winstanley	90
Jaspert	110
Ogden	50
Smith	35
Stracener	51
Ward	50
Watson	253
Carrigan	10
Nelson	50
Gully	10

14. Accompanying the Report was an agreement executed and signed by each of the above-named stockholders and by Harding on October 24, 1968 "to make the changes and adjustments" in the Corporation's records in order to correctly show "the number of common shares each Stockholder now owns." The number of shares specified for each individual was as reflected in the Ownership Report. Manifestly, the Ownership Report and the accompanying agreement were not only false but they were willfully and knowingly false. Winstanley knew that he was not the owner of 90 shares, and both Ward and Carrigan knew that their stock holdings were greater than represented. Corporate records establish that Jaspert was secretary-treasurer and Ward was vice-president during this period so that they must be charged with knowledge of the true facts. And, of course, Watson, the president of the licensee, was fully aware of the correct stock holdings of each. By means of these misrepresentations, the stockholders were able to conceal from the Commission that an unauthorized transfer of control had occurred. In this connection, we call attention to the fact that the Note on the Form 323 Ownership Report, (p. 3) expressly warns that:

> The purpose of this computation (list of transactions concerning the ownership of stock) is to assist the licensee or permittee in determining whether the transaction in question involves a transfer of control. If such is the case, the transaction cannot be authorized until prior Commission consent has been obtained.

[6] Based on the erroneous June 17, 1968, Ownership Report which indicated a stock issue of 900 shares, the original stockholders held majority control with 59.4% of the outstanding shares.

15. Further evidence that the principals of Capital City were aware of the significance of the stock transactions and their bearing on a possible transfer of control is provided by Capital City's letter of inquiry on July 5, 1968, with reference to the June 12, 1968, Ownership Report. In that letter, Capital City inquired whether the reported transactions (including the transfer of 255 shares from Harding to Watson) constituted a transfer of control. Since the Report indicated that the original stockholders held approximately 59.4% of the outstanding stock the licensee was advised that the changes did not amount to a transfer of control. Nevertheless, the stockholders must have, or should have, realized that any further stock transfers from the original to new stockholders required close scrutiny, careful analysis, and accurate reporting to insure that no unlawful transfer of control occurred. On the basis of the undisputed evidence presented by the Bureau, we find and conclude not only that an unauthorized transfer of control was consummated on August 19, 1968, but that the principals of Capital City knowingly misrepresented pertinent information and knowingly and willfully concealed material facts from the Commission in the November 6, 1968, Ownership Report.

16. Numerous other transactions occurred after the filing of the November 6, 1968, Ownership Report which disclose changes in stock ownership, unreported agreements for the transfer of stock, an unreported pledge of stock, and an unreported proxy. Briefly, the pertinent transactions are as follows:

(a) Katherine Davis Nelson acquired 40 additional shares on August 7, 1969, bringing her total holdings to 90 shares.

(b) William C. Bradley acquired 51 shares of stock formerly owned by Stracener and the stock certificate was issued by the Corporation on September 3, 1969. However, prior thereto, in August 1969, he pledged 51 shares of stock (apparently the stock acquired from Stracener) as security for a loan of $8,775.00 from the Baker Bank & Trust Company. The pledge was not reported to the Commission. Bradley also executed a document on September 18, 1969, which purported to assign and transfer 51 shares of stock to the said Bank and which stated that it did "irrevocably constitute and appoint" the Bank as attorney to transfer the stock on the books of the corporation.

(c) In November 1969, Watson, Carrigan, and F. J. Saia, a local businessman, secured a $20,000 loan from the American Bank & Trust Company of Baton Rouge, Louisiana. A cashier's check in the sum of $5,000 payable to Carrigan was used by Carrigan to purchase Ogden's stock (50 shares), and a cashier's check dated November 17, 1969, in the sum of $3,700 was made payable to Smith for all of his stock (35 shares) in the licensee. Another cashier's check, dated November 14, 1969, in the sum of $11,000 payable to Watson was used to purchase Ward's 82 shares. In a statement to the Commission dated December 9, 1969, Watson asserted that the "negotiations with these and other stockholders and the payment to Ward, Ogden, and Smith, are tentative and, of course, are subject to approval by the Federal Communications Commission." It is undisputed, however, that the agreements were negotiated and that the payments were actually made without notice to the Commission. Apparently, Ogden considered the transfer to have been finalized since he declined to attend stockholders' meetings held in 1970 on the ground that he had disposed of his interest and was no longer a stockholder. Although Ward and Smith did attend such meetings their reasons for doing so hardly support a finding that they considered the negotiations to be "tentative." In an affidavit attached to the Receiver's June 30, 1972, pleading, Smith admits that he and Ward "took advantage" of the fact that their stock had not been "transferred on the corporate books nor with the records of the FCC" to act as stockholders. Ward's affidavit, also attached to the said pleading,

adopted Smith's "affidavit as my own on the points covered". We find here something less than complete candor on the part of these individuals.

(d) On or about September 18, 1969, Jaspert sold his 110 shares to Bradley, Watson, and Carrigan, and received at least part payment therefor. Prior thereto on August 6, 1969, Jaspert gave Bradley a power of attorney to vote his stock. This power of attorney constituted a proxy which should have been reported to the Commission but this was not done until the filing of an Ownership Report in 1970.

17. Even if the 1968 stock transactions had not constituted an unauthorized transfer of control—and we have found that they did—these 1969 transactions clearly had that result. In an Ownership Report executed by Watson on February 25, 1970, and filed with the Commission on March 3, 1970, 62% of Capital City's stock was held by individuals who had not been stockholders when the WLUX license was assigned from KCIL, Inc. in 1967. Nevertheless, no application for authorization to transfer control was submitted to the Commission. Furthermore, the Ownership Report contains information which is at variance in many substantial respects from the facts set forth above. This Report indicated the stock ownership as of February 25, 1970, to be as follows:

	Shares	Percent
Jaspert	110	15
Ogden	50	7
Smith	35	5
Ward	82	11
Watson	253	34
Nelson	90	12
Carrigan	68	9
Bradley	51	7
Gully	10	1

While the sales by Jaspert, Ogden, Smith, and Ward of their stock interests were not recorded on the corporation's stock transfer book, Watson, Bradley, and Carrigan had personal knowledge thereof since they were parties to the transactions. Consequently, their failure to take steps to insure both that the Commission be informed of the aforementioned transfers of stock interests and that erroneous information not be submitted in an Ownership Report constituted an abdication of their responsibilities as principals of the licensee of a broadcast facility which is inexcusable.

18. As a result of judicial proceedings which were initiated by Harding and which culminated in a decree favorable to him in 1970, Harding reacquired the stock which had been transferred to Watson in May, 1968. Harding resumed his position as president of Capital City as of July 2, 1970, and an amended Ownership Report was executed by him in that capacity and was filed with the Commission on August 21, 1970. No charges of misconduct have been advanced by the Bureau against the corporate licensee after Harding resumed control of station operations.

19. In addition to the failure to report agreements for the transfer of stock, proxies, and pledges in violation of Section 1.613 of the Rules

and to the failure to file timely and accurate Ownership Reports in violation of Section 1.615, the following rule violations have been established herein:

(a) On November 22, 1968, the station was being operated without a licensed radio operator on duty in violation of Section 73.93 of the Rules.
(b) On numerous dates in October and November, 1969, the station was operated without a licensed radio operator on duty in violation of Section 73.93 of the Rules.
(c) Upon numerous dates in October and November, 1969, Watson, who did not have a valid radio operator's license, signed the name of Lou Millet, a licensed operator, to the station's operating logs in violation of Section 73.111(a). The said Lou Millet was not on duty during the period in question and had no knowledge of the facts as required.
(d) Watson signed his name to the station log on August 7, 1969, even though his license had expired.

20. For a single three year license period the principals of Capital City have managed to amass a truly remarkable record of misconduct which includes: misrepresentations to the Commission, the concealment of material facts, extreme carelessness and negligence in submitting information which establish an utter disregard of the responsibilities of a broadcast licensee to the Commission; violations of Section 1.613 of the Rules in failing to report agreements for the transfer of stock, proxies, and pledges as required therein; violations of Section 1.615 for the failure to file timely and accurate Ownership Reports; violations of Section 73.93 in failing to have a licensed radio operator on duty; and violations of Section 73.111 and 73.113 in that Watson affixed the signature of a licensed operator to the station's logs during a period when the licensed operator was not on duty and signed his own name to a station log even though his license had expired. As set forth above, the Receiver concedes that these violations have occurred but he pleads that there are mitigating circumstances which justify a renewal of license in conjunction with the approval of the application for assignment of license.

21. The circumstances advanced in mitigation go primarily to the alleged acquisition by Watson of *de facto* control of Capital City in 1968 when Harding's stock was transferred to him; to the gross mismanagement of the station by Watson and the inability of the other stockholders to wrest control from him until the successful conclusion, in 1970, of the court proceedings initiated by Harding; and to the efforts by Harding after his resumption of the presidency of the corporation to remedy the results of Watson's misconduct and mismanagement. That Watson was guilty of gross misconduct in the operation of WLUX has been established by substantial, probative evidence. However, we cannot accept as established by this record the further contentions that the other stockholders were powerless to correct the serious wrongdoing which they observed, that any wrongdoing by such stockholders was minimal in nature, and that these asserted mitigating circumstances justify favorable action on the Receiver's request for renewal of license. On the contrary, the evidence of record, which we have recited in detail for the purpose of showing the extent of involvement of the stockholders in station affairs, discloses numerous instances where the principals of Capital City participated in acts of

misconduct which reflect adversely on their qualifications to be licensees of a broadcast facility. Winstanley signed the 1967 assignment application and Harding executed the November 1, 1967, Ownership Report, both of which contained erroneous information. Bradley was a party to several transactions which were not reported to the Commission as required by the rules. The agreement executed by the stockholders which accompanied the Ownership Report filed on November 6, 1968, constituted affirmative misrepresentations by Winstanley, Ward, and Carrigan concerning their stock interests and these misrepresentations served to conceal an unauthorized transfer of control.

22. Likewise, no report was submitted to the Commission concerning the sales and transfers in November, 1969, of the stock interests of Ogden, Ward, and Smith. Additional transactions involving Jaspert, Stracener, and others which have heretofore been set forth demonstrate their participation in unreported and improper activities. Harding, Winstanley, and Jaspert previously had been associated with the broadcast industry, and they cannot excuse their failure to meet their obligations and responsibilities to submit full, complete and accurate information to the Commission concerning material matters relating to station operations on the ground of lack of experience or unfamiliarity with the Commission's requirements. Stracener and Bradley are attorneys and they either knew or readily could have ascertained the requirements of the Communications Act and the regulations of the Commission concerning transfer of control, reports of stock transfers and other reports required from a broadcast licensee. At no time during this period did any of the aforementioned stockholders complain to the Commission about Watson's mismanagement or attempt to bring to the Commission's attention the true facts concerning the numerous stock transfers and other unreported and unauthorized transactions enumerated herein. In our view, these acts of misconduct cannot be excused on the ground of Watson's *de facto* control or because the other stockholders were powerless to prevent his mismanagement of station operations. On the contrary, we find that these stockholders engaged in affirmative acts of misrepresentations and other inexcusable acts of misconduct.

23. It is further contended by the Receiver that the misconduct committed by the licensee's principals warrant at most the imposition of a forfeiture. Numerous cases are cited in support of this contention but we find them to be distinguishable.[7] While unauthorized transfers of control were involved in each of these cases and only a forfeiture was assessed against the licensee, the acts of misconduct in none of the cases cited come anywhere near, in either extent or seriousness, the wrongdoing of which Capital City's principals were guilty. Unlike the situation in the case under consideration, no case cited by the Receiver concerned misrepresentations and concealments of material facts and we have consistently held that such conduct must be accorded significant weight in determining whether a renewal of license is in the

[7] The cases cited are: *Areawide Communications, Inc.*, 12 FCC 2d 170, 12 RR 2d 797 (1968); *KEEDO, Inc.*, 12 FCC 2d 231, 12 RR 2d 962 (1968); *Bartell Broadcasters, Inc., et al.*, 19 FCC 2d 890, 17 RR 2d 478 (1969); and *Interstate Broadcasting Co.*, FCC 64–105, 1 RR 2d 988 (1964).

public interest. *Vinita Broadcasting Co., Inc., et al.*, 30 FCC 2d 458, 462 (1971); *Nick J. Chaconas*, 28 FCC 2d 231, 233 (1971). In *Bartell Broadcasters, Inc.*, 19 FCC 2d at 898, as the Receiver states, we did take into consideration as a mitigating factor the serious injury which would be caused to 3,000 stockholders innocent of any wrongdoing by a denial of renewal, and took other remedial action instead. However, we also held therein that "the ultimate disposition of this matter must be taken as a stern warning that the provisions of Section 310(b) of the Communications Act of 1934, as amended, must be strictly observed by all broadcast licensees." Not only is the wrongdoing established in this case of a more serious nature than that found in *Bartell*, but we find no comparable equities in favor of innocent stockholders.

24. In the disposition of this case we have taken into consideration the equities in favor of innocent creditors; but we find that such equities are outweighed by other public interest considerations. Before a station license is awarded or an assignment of license is approved we scrutinize the qualifications of the prospective licensee and its principals to insure to the extent possible that the broadcast facility will be operated in the public interest. However, such scrutiny would be meaningless if the station could thereafter come under the control of other individuals whose qualifications were unknown to the Commission. For this reason no assignment of license or transfer of control of a corporate licensee may be undertaken without prior Commission authorization. Moreover, since we cannot investigate every broadcast facility in the country to insure compliance with this requirement we demand absolute candor from applicants for broadcast authorizations. When such candor is not forthcoming and an authorization is obtained by means of misrepresentations or the concealment of material facts, action is taken, except in a very limited number of situations where special circumstances justify a different disposition, to terminate the authorization as a deterrent to others who might be tempted to engage in such misconduct. And we take such action even though innocent creditors or stockholders may sustain financial losses as a result thereof.

25. When KCIL, Inc. accepted a note in the sum of $100,000 from Capital City as part of the $225,000.00 consideration for the assignment of its license, it assumed the risk that misconduct by the principals of the assignee during the period of their stewardship might require a denial of the assignee's renewal application. Likewise, when creditors of Capital City extended credit to the licensee, they assumed the same risk.[8] Nevertheless, we would have granted a renewal subject to the assignment of the license to an acceptable assignee if the record had established that no stockholder who would derive a significant benefit from such action had engaged in wrongdoing. Substantial evidence of record establishes the contrary. Numerous and serious acts of misconduct were committed by stockholders who would be relieved of their secondary liability on corporate notes totaling more than $51,000

[8] For a more complete discussion of this subject see our February 23, 1972, Memorandum Opinion and Order in this case, 33 FCC 2d at 707–708.

(33 FCC 2d at 705, 711)[9] if the renewal and assignment applications were granted. Were we to accept injury to innocent creditors as sufficient justification for permitting wrongdoers to obtain such significant benefits our ability to enforce compliance with the provisions of the Communications Act and the Commission's rules would drastically be undermined. In the circumstances of this case, the grant of the extraordinary relief requested by the Receiver would be inconsistent with the public interest.

26. In view of the nature and extent of the misconduct by principals of Capital City established by this record, particularly the evidence of misrepresentations, concealments of material facts, and gross negligence, we conclude that the imposition of a forfeiture is not an appropriate sanction in this case. Rather, we conclude that the renewal applicant has failed to sustain its burden of showing that a grant of the application would serve the public interest, convenience, and necessity, and that the application must be denied. Since the facts of this case are not in dispute and no novel issues of law are presented, oral argument would serve no useful purpose and the Receiver's request therefor will be denied.

27. Accordingly IT IS ORDERED, That the above-captioned application (Docket No. 19067, File No. BR–4266) of Capital City Communications, Inc., prosecution of which was continued by Erwin A. LaRose as Receiver for the bankrupt estate of the said Capital City Communications, Inc., IS DENIED; and

28. IT IS FURTHER ORDERED, That Erwin A. LaRose as Receiver for the bankrupt estate of Capital City Communications, Inc. IS AUTHORIZED to continue to operate the station for a period of sixty days after the release date of this Decision to enable the said Receiver to conclude the station's affairs; PROVIDED, HOWEVER, That if a proceeding for judicial review of our Decision is instituted, the Receiver is authorized to continue to operate Station WLUX until thirty (30) days after the final disposition of said appeal; and

29. IT IS FURTHER ORDERED, That the petition of the Receiver filed June 30, 1972 for leave to file a pleading in response to the Bureau's comments IS GRANTED, and the tendered pleading IS ACCEPTED for filing; and

30. IT IS FURTHER ORDERED, That the request of the Receiver for oral argument IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[9] Harding, Winstanley, Jaspert, Smith, Ward, and Watson are guarantors on a promissory note by Capital City to Capital Bank and Trust Compny on which the balance due is $42,074.65. On another note to Baker Bank and Trust Co., on which a balance of $9,255.00 is due, Watson, Ward, Bradley, and Carrigan, are guarantors.

F.C.C. 72-765

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of CAPITOL BROADCASTING CORP., STEUBENVILLE, OHIO Requests: 950 kHz, 500 W., DA, Day	File No. BP-18323
TRENDCOM CORP., WEIRTON, W. VA. Requests: 950 kHz, 500 W, DA, Day For Construction Permits	File No. BP-18471

MEMORANDUM OPINION AND ORDER

(Adopted August 29, 1972; Released September 7, 1972)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND REID ABSENT. COMMISSIONER JOHNSON CONCURRING IN THE RESULT. COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission has before it for consideration (i) the above-captioned mutually exclusive applications; (ii) a petition to deny the application of Capitol Broadcasting Corporation, filed by 1430 Corporation; (iii) an opposition to the petition to deny, submitted by the Capitol Broadcasting Corporation; and (iv) a joint request for approval of an agreement filed by the applicants on December 16, 1971, whereby the application of Trendcom would be dismissed in return for reimbursement of expenses incurred in the preparation and prosecution of its application, and Capitol's application would be granted.

2. The 1430 Corporation, licensee of station WEIR, Weirton, West Virginia, has filed a petition to deny the application of Capitol Broadcasting Corporation alleging deficiencies in the applicant's financial plan and community survey, and apparently attempting to raise a *Carroll*[1] issue. The financial and community survey issues will be treated separately in this Order. Although 1430 did not specifically cite *Carroll* in its petition, the Commission and Capitol agree the petition raises a *Carroll* issue. WEIR alleges that a Commission grant to Capitol would have such a deleterious effect upon its economic condition that a reduction of its presently expanded public affairs programming would be required. Since the proposed station would compete for an audience and revenues with station WEIR, we find the petitioner has standing within the meaning of section 309(d) of the Commission's rules. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 490, 9 RR 2008 (1940).

3. In support of its allegation that a grant of the Capitol application would cause economic injury and a net decrease in the amount of

[1] *Carroll Broadcasting Company* v. *F.C.C.*, 103 U.S. App. D.C. 346; 258 F.2d 440; 17 RR 2066 (1958).

public service broadcasting, the petitioner proffers the following: the number of other advertising media [2]; its station's total revenues, expenses, profits, and losses [3]; the percentage of advertising revenues obtained from Steubenville [4]; and the amount of yearly public service broadcast matter used.[5] No other substantive data relating to this issue have been submitted.

4. In opposition, Capitol points out that the Steubenville-Weirton metropolitan area is a highly industrialized area with a stable economy supporting a population of 167,756 (1960 census, S.M.S.A.). Only two standard broadcast stations [6] are licensed to serve the area. In light of the existence of markets smaller than the Steubenville-Weirton market which have demonstrated a capacity to support three or more stations, Capitol dismisses as incredible, the petitioner's assertion that the market cannot support another aural facility. Capitol asserts, moreover, that the petitioner has not made a sufficient showing that competition from the new service would cause a reduction of WEIR's programming were its revenue diminished, or documented how the petitioner will lose advertising revenue to Capitol. Thus, Capitol concludes, the petitioner has fallen short of meeting its threshold burden to warrant the designation of a *Carroll* issue.

5. In *Carroll* the court determined that the Commission has the authority to consider the foreseeable economic effects arising from the grant of a new license on the service of an existing station when the public interest is adversely affected. Economic injury caused by the loss of revenues to a new competitor becomes important if, on the facts, a significant diminution or destruction of public service broadcasting would occur. Subsequently, the Court of Appeals in Folkways [7] described the burden placed on a petitioner raising a *Carroll* issue. Although a petitioner is not required to have "pre-knowledge of the exact economics of the situation" which would occur after a grant of the license, a *Carroll* petitioner must show there would be a net loss or degradation of service to the public resulting from the necessary abandonment of a program or programs. 126 U.S. App. D.C. 133, 139; 8 RR 2d 2089, 2096. Recently, the same court in *WLVA, Incorporated* v. *F.C.C.*,[8] citing *New Era Broadcasting Co., Inc.*,[9] and *Cardinal*

[2] Station WEIR competes for audience and advertising revenue with stations WSTV (AM and FM), Steubenville, Ohio, and television station WSTV–TV.

[3]

	Advertising revenues	Expenses	Profit
1965	$143,052	$133,797	$7,685
1966	159,001	142,388	13,073
1967	166,974	147,835	15,093

WEIR has not placed in issue the financial performance of the station subsequent to 1967.

[4] Approximately 37 percent of Tri-State's advertising revenue has come from businesses located in the city of Steubenville.

[5] Station WEIR avers it devotes 9.65 hours per week to broadcasting public service matters.

[6] In addition to the two standard stations, the Steubenville-Weirton market supports an FM station and TV station.

[7] *Folkways Broadcasting Company, Inc.* v. *F.C.C.*, 126 U.S. App. D.C. 123; 375 FCC 2d 299 (1967).

[8] — U.S. App. D.C. —, — FCC 2d —, 23 RR 2d 2081 (January 4, 1972).

[9] 16 FCC 2d 824; 15 RR 2d 918 (1969).

Broadcasting Co., Inc.[10] reaffirmed the Commission's insistence upon specific factual data rather than generalized and conclusory allegations of public injury; i.e., "statistics as to the number of businesses in the area, total volume of retail sale, other advertising media, the number of area businesses which do not presently advertise, cost of public service programming, and other data related to the economics of broadcasting which may tend to show that the area involved could not support another station without loss or degradation of program service to the public." The court went on to state that such data is readily available to the petitioner and is indispensable if the Commission is to make informed judgments as to the need for full-scale evidentiary hearings.

6. When measured against the specific data required, the Commission finds the petitioner has failed to support its allegation of harm to the public. It did not provide an economic profile of the Steubenville-Weirton business community describing the total number of businesses in the area, the total volume of retail sales, and the number of businesses in the area not presently advertising on the radio. Nor did the petitioner state its cost of producing public service programs. Thus, it did not meet the pleading requirements set out in paragraph 5, *supra.*

7. The petitioner also alleges that the applicant is financially unqualified and has failed to meet the Commission's policy regarding ascertainment of community needs. Having examined the application, we find that whatever deficiencies may have existed when the petition was filed have been obviated by subsequent amendments. Thus, the petitioner's allegations are now essentially moot. Capitol has projected first-year construction and operation costs of approximately $100,000. To pay for these expenses, the applicant relies upon existing capital, profits from its existing station, and a valid bank loan totaling $302,990. Our examination of the applicant's survey of community needs, moreover, reveals it has complied with the *Primer.*[11] Capitol's principals interviewed more than 40 community leaders from the proposed aural service area as well as obtaining responses from more than 100 members of the general public. These contacts appear to reflect the groups shown to exist in its demographic study. In addition, Capitol has listed the community problems ascertained by the survey, and listed programs designed to treat some of these problems.

8. In light of the foregoing discussion, we find that the petition to deny filed by 1430 Corporation, licensee of station WEIR, Weirton, West Virginia, has failed to raise substantial and material questions of fact in regard to the Capitol Broadcasting Corporation's application. Accordingly, the petition will be denied.

9. The applicants filed a joint petition on December 16, 1971, requesting Commission approval of a drop-out agreement. The petition provided for the dismissal of the Trendcom application in return for the payment of the expenses incurred by Trendcom in filing and prosecuting its application. By Memorandum Opinion and Order, 23 RR 2d 1194, reconsideration denied, 34 FCC 2d 18, 24 RR 2d

[10] 11 FCC 2d 847; 12 RR 2d 599 (1968).
[11] *Primer on Ascertainment of Community Problems by Broadcast Applicants,* 36 FR 4092; 27 FCC 2d 650 (1971).

336 (1972), the Commission ordered further consideration of the joint petition and Capitol's application held in abeyance pending publication in accordance with the provisions of 1.525(b) of the rules, in order to afford other persons an opportunity to apply for the facilities specified in the Trendcom application. In compliance with this order, publication has been effected, notice of the publication has been duly filed with the Commission, 30 days has elapsed since the last day of publication, and no further applications have been filed. Accordingly, we find that approval of the agreement would be in the public interest since it would permit an immediate grant of Capitol's application, thereby expediting the licensing of a new standard aural service for Steubenville, Ohio. The parties have complied, moreover, in all respects with the requirements of rule 1.525.

10. Furthermore, we have examined the proposal of Capitol Broadcasting Corporation and find that it is fully qualified to construct and operate its proposed station, and that a grant of its application would serve the public interest, convenience, and necessity.

11. Accordingly, IT IS ORDERED, That the petition to deny filed by the 1430 Corporation IS DENIED; that the joint petition for approval of agreement and dismissal of the Trendcom Corporation application, filed on December 16, 1971, by Capitol Broadcasting Corporation and Trendcom Corporation IS GRANTED; that the agreement IS APPROVED to the extent indicated herein; that the application of Trendcom Corporation (BP–18471) IS DISMISSED; and that the application of Capitol Broadcasting Corporation (BP–18323) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-811

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Motion for
DECLARATORY RULING BY COLUMBIA BROADCASTING SYSTEM, INC.

MEMORANDUM OPINION AND ORDER

(Adopted September 13, 1972; Released September 19, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE and REID ABSENT; COMMISSIONERS JOHNSON AND H. REX LEE CONCURRING IN THE RESULT.

1. The Commission presently has before it for consideration (i) a "Motion for Extension of Time," submitted by Janet C. Whittaker, the Philadelphia Communications Coalition, *et al.* (Coalition or petitioners), to file a reply to the oppositions to the Coalition's "Petition to Prevent Continued Violation of Commission's Equal Employment Opportunities Rules" directed against 28 Philadelphia area broadcast stations;[1] (ii) a further "Motion for Extension of Time"; (iii) a "Motion for Declaratory Ruling," filed by Columbia Broadcasting System, Inc. (CBS), licensee of WCAU, WCAU-FM and WCAU-TV; (iv) a "Motion in Support of 'Motion for Declaratory Ruling,'" filed by Metromedia, Inc. (Metromedia), licensee of WIP and WMMR (FM), Philadelphia, Pennsylvania; and (v) petitioners' "Motion to Dismiss CBS's Motion for Declaratory Ruling."

2. On July 3, 1972, the Coalition filed with the Commission a "Petition to Prevent Continued Violation of Commission's Equal Employment Opportunities Rules" against the aforementioned 28 broadcast stations. On July 26, 1972, after the filing of oppositions by some of the affected licensees and in anticipation of the filing by the others, petitioners filed their "Motion for Extension of Time," requesting the Commission to allow them to file a reply to the oppositions on September 1, 1972.[2] By way of justifying the request, petitioners state, *inter alia*, their intention to file "a comprehensive reply incorporating the legal and factual arguments . . . [against] each licensee into a single document." It is argued that a consolidated pleading would (i) eliminate the administrative burden of having to review twenty separate replies, "many of which, by necessity, would have to contain similar

[1] KYW (AM, TV), WCAU (AM, FM, TV), WDVR (FM), WFIL, WFLN (AM, FM), WHYY-TV (Ed), WIBG, WIFI (FM), WIOQ (FM), WKBS-TV, WIP, WMMR (FM), WPBS (FM), WPEN (AM, FM) WPHL-TV, WPVI-TV, WRCP (AM, FM), WTAF-TV, WTEL, WUHY-FM (Ed), WWSH (FM), WYSP (FM).

All but one of these stations, WKBS-TV, Burlington, New Jersey, has on file with the Commission a pending renewal application. On May 31, 1972, before the petition was filed, WKBS-TV's renewal application was granted.

[2] Subsequently on August 11, 1972, petitioners requested an additional extension to September 18 to file their reply.

legal arguments"; (ii) emphasize the "market-wide" nature of the alleged employment discrimination; and (iii) minimize the expenses ("especially duplicating expenses") incurred in preparation of the petitioners' responses. Despite their intention to file a single pleading, petitioners point out that they plan to prepare "a comprehensive and detailed reply to *each* opposition." (Emphasis added.)

3. On August 11, 1972, in response to petitioners' first request for an extension, CBS filed its "Motion for Declaratory Ruling," pursuant to Section 1.2 of the Commission's Rules and Regulations, CBS does not oppose petitioners' request for an extension of time. Rather, it objects to petitioners' adoption of a "blunderbuss" approach to the filing of their reply pleading. By way of relief, CBS "requests the Commission to order petitioners to separately state as to each of the 28 stations their factual arguments and legal support with specific reference to the separate oppositions filed by the various licensees involved." [3]

4. In support of this request, CBS first contends that the Commission, when previously confronted with allegations of market-wide discrimination, has preferred to evaluate and analyze the equal employment opportunities performances of specific stations on an individual basis. Therefore, in order to insure that the issue of individual station performance is joined in this proceeding, CBS argues that the Commission must require that petitioners separately state their factual and legal arguments. Otherwise, the licensees may not be able to determine "which of the allegations [are] applicable to which stations."

5. Secondly, since the Coalition in its petition requests the Commission to impose one or more of several administrative sanctions, CBS contends that a separate and specific statement of the facts pertaining individually to each station is absolutely necessary for each licensee to frame a response and for the Commission to determine whether any action should be taken as to a particular licensee.

6. Petitioners, in their "Motion to Dismiss CBS's Motion for Declaratory Ruling," filed on August 16, 1972, characterize the CBS request "as improvidently submitted, dilatory and superfluous." They argue that CBS has needlessly sought relief since it has only "urged the Commission to order Petitioners to do what Petitioners have themselves notified the Commission that they intend to do—namely, reply to *each* opposition and respond to individual factual and legal arguments on their individual merits." Accordingly, petitioners ask that CBS's motion be dismissed.

CONCLUSIONS

7. We note that CBS has framed its motion in the form of a request for a declaratory ruling pursuant to Section 1.2 of the rules, 47 C.F.R. § 1.2. Under the circumstances presented here, we question whether a declaratory ruling is, procedurally speaking, the appropriate form of relief, since Section 5(d) of the Administrative Procedure Act limits the applicability of declaratory rulings to those cases "of adjudica-

[3] In a pleading dated August 14, Metromedia supported the CBS motion.

tion required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. 554(a). Nevertheless, we have decided to consider the substance of the CBS motion.

8. Section 309(d) of the Communications Act of 1934, as amended, (47 U.S.C. § 309(d)), and Section 1.580(i) of the Commission's Rules (47 C.F.R. § 1.580(i)), provide, in substance, that a petition shall contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest.[4] It is, therefore, the responsibility of the parties to assure that issues are properly joined. Should petitioners fail to clearly indicate "which of the allegations [are] applicable to which stations," the Commission may find that the pleadings lack the specificity required by Section 309(d) of the Act. Further, our rules provide for the filing of a petition to deny, an opposition and a reply. Under Section 1.45 of the rules, additional pleadings may be filed only if specifically requested or authorized by the Commission.

9. In conclusion, we find that no useful purpose would be served by requiring petitioners to adhere to a particular format in the preparation and organization of their reply. Petitioners are free to submit their factual allegations and legal arguments within the context of any format they choose. Commission action at this juncture would be premature because, as previously indicated, our consideration of the substantive matters contained in petitioners' pleadings necessarily includes an evaluation of the specificity of their allegations.

10. Accordingly, IT IS ORDERED, That the "Motion for Declaratory Ruling" filed by CBS IS DENIED.

11. IT IS FURTHER ORDERED, That the petitioners' request for an extension of time to September 18, 1972, within which to file a reply IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[4] As mentioned above, petitioners have requested various forms of relief. For our purposes here, however, we will treat the "Petition to Prevent Continued Violation of Commission's Equal Employment Opportunities Rules" as a petition to deny the applications for renewal of the licenses of the above-captioned stations.

109-009—72——3

F.C.C. 72-807

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of ESTABLISHMENT OF DOMESTIC COMMUNICATIONS-SATELLITE FACILITIES BY NON-GOVERNMENTAL ENTITIES.	Docket No. 16495

MEMORANDUM OPINION AND ORDER

(Adopted September 13, 1972; Released September 14, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID ABSENT.

1. On June 30, 1972 the Communications Satellite Corporation (Comsat) filed a request, pursuant to Section 1.106(n) of the Commission's Rules and Regulations, for a stay of the *Second Report and Order* issued in this proceeding on June 16, 1972. In addition to seeking a stay of the effectiveness of that Order with respect to its own applications for a domestic satellite system, Comsat requested that the Commission "not entertain or process any applications filed pursuant thereto or otherwise implement the Order pending release of a final Commission decision on reconsideration and completion of any judicial review of that final decision." Comsat's request is opposed by Western Union Telegraph Company (Western Union), MCI Lockheed Satellite Corp. (MCI Lockheed), Hughes Aircraft Company (Hughes), and Western TeleCommunications, Inc. (WTCI); and supported by American Telephone and Telegraph Company (AT&T). By Order adopted on July 19, 1972 (FCC 72-645) the Commission, on its own motion, extended the July 25, 1972 date specified in paragraph 45 (a) and (b) of the *Second Report and Order* pending action on the request for stay.

2. In support of its request for stay relief, Comsat asserted that the policies and conditions in the *Second Report and Order* reflect a substantially different approach from that recommended by the Common Carrier Bureau and that there has been a close division within the Commission, as well as divergent views among the parties, on issues in this proceeding. Comsat further stated that it intended to file a petition for reconsideration, raising substantial questions, and anticipated that others would seek reconsideration. In the circumstances, Comsat urged, it would be premature to require applicants to take action consistent with the policies and conditions specified in the Order or to make decisions upon the assumption that the Order will be unchanged. Comsat claimed that it in particular would be confronted with a drastic election. Paragraph 45(b) of the Order does not afford adequate relief since it provides that an applicant may

request additional time only for the purpose of "reframing its proposal consistently with such policies and conditions." Moreover, even if Comsat were not required to bring its proposal into compliance with the Order pending a final decision on reconsideration, it would allegedly be placed at a substantial disadvantage if other applications were to be processed. and perhaps even granted, in the interim.

3. In supporting Comsat's request, AT&T urged in addition that the more orderly approach would be to defer to an appropriate date after final action on reconsideration the requirement that applicants file with the Commission a statement concerning their intentions with respect to their domestic satellite applications.

4. Those opposed to a stay object principally to the request that the Commission not entertain or process any domestic satellite applications or otherwise implement the *Second Report and Order* pending Commission action on reconsideration and any judicial review. They urge that Comsat and any other applicant desiring to await the outcome of reconsideration should be free to do so, provided that those applicants who are in the main satisfied with the *Second Report and Order* are not precluded from moving ahead. They further assert that Comsat has failed to satisfy the standard criteria for stay relief set forth in *Virginia Petroleum Jobbers Ass'n.* v. *Federal Power Commission*, 259 F.2d 921 (C.A.D.C. 1958), and followed by the Commission (e.g., CATV Rules, 34 FCC 2d 165, 166 (1972)), namely:

(a) The likelihood of prevailing on the merits of the appeal;
(b) Irreparable injury to petitioner if the stay is denied;
(c) No harm to other interested parties if the stay is granted; and
(d) The stay would be in the public interest.

5. Thus, they claim that Comsat did no more than state that it it would file a petition for reconsideration raising substantial questions, but did not identify the nature of such questions or show that they would be likely to result in modification of the *Second Report*. Further, while the Commission placed special conditions or limitations on some applicants in adopting a policy of multiple entry, some applicants are not subject to any special conditions and reconsideration is unlikely to increase the restrictions particularly in the case of those applicants who have not sought reconsideration.

6. In asserting that Comsat has not shown that it would suffer irreparable injury if others were free to proceed at their own risk,[1] those opposed to a stay note that Comsat would obtain at least part of the relief requested through the normal processing delays to be anticipated for applications of this nature. They point out that the *Second Report and Order* does not require applicants to amend their applications to conform to the policies enunciated by any specified date, but merely to apprise the Commission as to their intentions. Moreover, the *Second Report and Order* (paragraph 45(b) and footnote 11) contemplates the issuance of a public notice on processing

[1] In disputing Comsat's claim that major expenditures by others to amend their applications would give rise to claims of equity, MCI Lockheed asserts that most "applicants have already spent much more money in preparing and prosecuting their applications up to now * * * than they could possibly expend in conforming their applications to the Report and Order."

procedures, and applicants allegedly cannot perfect all amendments until such procedures are established. Western Union further argues that Comsat would not suffer any legally cognizable injury if other applicants were processed, because an applicant is without any legal right to demand that rule making matters affecting its applications be resolved before the Commission processes and grants other applications that accord with its policies and rules or, in the absence of a situation of mutual exclusivity, to secure contemporaneous processing of its and co-pending applications. *Coastal Bend Television Co.* v. *F.C.C.*, 234 F.2d 686, 690 (C.A.D.C. 1956); *F.C.C.* v. *WJR*, 337 U.S. 265, 272 (1949); *Mount Pleasant Radio, Inc.*, 20 Pike & Fischer, R.R. 2d 761 (1970).

7. Those opposed to Comsat's request also urge that the grant of a general stay would irreparably harm other parties by delaying their realization of the potential service and cost advantages of domestic satellites and by creating uncertainties and complexities in the utilization of personnel having special expertise in this field. Western Union claims that the indefinite postponement sought by Comsat would require Western Union, in order to meet its domestic service obligations (which Comsat does not now have), to expend funds for terrestrial facilities that could be more effectively invested in satellite facilities. MCI Lockheed notes that a general stay would mean that while Comsat exhausted every possibility for reversal, other applicants who may not wish to contest the Commission's decision would have to postpone the date upon which they could begin to recoup their investments and delay to some indefinite time the utilization of the resources they have committed on a standby basis.

8. Finally, it is contended that the broad relief requested by Comsat would be contrary to the public interest and the goal of making the benefits of domestic satellite communications service available to the public at an early date. Noting that this proceeding has been pending for six years already and that processing of the applications and implementation of any grant will be time consuming in any event, they claim that the public interest could not be advanced by adding the "unnecessary and unjustified delay sought by Comsat." Western Union further urges that concern as to delay in the inauguration of new service has long been a key factor in rejecting stay requests and that " 'the promise of the early commencement of service [via satellite] must take precedence' over further argument Comsat may make concerning the kind of domestic satellite system it will have." *Los Angeles Unified School District*, 22 RR 2d 141, 143 (1971).

DISCUSSION AND CONCLUSIONS

9. Upon consideration of the pleadings of the parties, we are of the view that any applicant that desires to defer stating its intentions, making an election, filing amendments to conform its applications to the *Second Report and Order* or otherwise pursuing its application for domestic satellite facilities pending Commission action on the petitions for reconsideration and any judicial review, should be permitted to do so. Accordingly, in addition to the alternatives afforded by paragraph

45(b) of the *Second Report and Order*, any applicant may file a statement to the above effect on or before the new date specified in the order herein. However, for the reasons stated below we are of the opinion that insufficient cause has been shown for a grant of extraordinary stay relief which would preclude processing of any applicant preferring to proceed at its own risk in the present posture of this proceeding.

10. Neither Comsat nor AT&T has made any showing as to the likelihood of prevailing on the merits of their petitions for reconsideration or how the applications of others could be substantially affected thereby. Comsat's request for stay, which was filed prior to its petition for reconsideration, merely states that "Comsat intends to file a petition for reconsideration, raising substantial questions, as promptly as is reasonably possible * * *." Comsat did not identify the nature of such questions, or state what policies and conditions in the *Second Report and Order* it intended to challenge, or indicate how success on its unspecified challenges could affect other applications. AT&T in its supporting letter, filed concurrently with AT&T's petition for reconsideration, stated only that the "disposition by the Commission of the petitions for reconsideration filed in this proceeding by AT&T and other parties will directly affect the manner in which AT&T and presumably others pursue their domestic satellite system proposals." Thus, Comsat and AT&T have failed to satisfy the first prerequisite for the grant of stay relief, a showing of "likelihood of prevailing on the merits of the appeal."

11. Nevertheless, in light of our public interest responsibilities, we have on our own motion examined the petitions for reconsideration filed by Comsat and AT&T to ascertain whether the applications of others would be affected in the event either should prevail. In its petition for reconsideration Comsat states (page 2):

> In this petition we challenge the soundness of that view [that "Comsat is somehow competitively crippled by reason of AT&T's ownership of Comsat stock and representation on Comsat's Board of Directors"] and the soundness of the restrictions imposed upon Comsat by the Order. Specifically, we ask that the Commission reconsider its Order that: (1) disapproves of the Comsat application to serve AT&T (paragraphs 13, 22); (2) artificially divides the potential market and requires Comsat to elect one of the markets (paragraphs 22–25); and (3) restricts Comsat's ability to provide service to off-shore points (paragraph 26). (Material in brackets is supplied from the preceding sentence in Comsat's petition.)

Comsat does not otherwise challenge the policies and conditions in the *Second Report and Order* or seek additional restrictions on other applicants.

12. AT&T's petition for reconsideration states (page 3):

> Thus, while we are in substantial agreement with many of the other conclusions reached by the Commission in its Order, we respectfully submit that the limitation placed upon AT&T's initial use of domestic satellites for particular services and the denial of the AT&T/Comsat proposal are, as more fully set forth hereinafter, contrary to the record developed in this proceeding and past Commission policy, and will not serve the public interest in the future development of satellite technology and services. In addition, considerations affecting the Commission's conclusions regarding rates for services to Hawaii, Alaska and Puerto Rico, the GTE proposal and interconnection are discussed herein.

AT&T's comments on the latter matters do not appear to warrant a halt in all processing pending reconsideration. The *Second Report and Order* contemplated that consideration of the question of specific revised rates to Alaska, Hawaii and Puerto Rico would not commence until six months after the issuance of the pertinent construction permits for domestic satellite facilities (paragraph 37). Insofar as GTE is concerned, AT&T supports the showing required by paragraph 29 of the *Second Report and Order* and expresses its willingness to continue to cooperate in the development of pertinent information. And, while AT&T challenges the requirement in paragraph 34 that applicants who are existing terrestrial carriers shall submit a description of the kinds of interconnection arrangements that will be made available for Commission approval prior to the grant of a domestic satellite authorization to such carrier, AT&T is the applicant principally affected by this requirement. Moreover, it claims that the requirement "will only delay domestic satellite authorizations" (AT&T petition, page 21).

13. We are satisfied that there is nothing in the petitions for reconsideration filed by those who have sought stay relief which warrants a general stay of the effectiveness of the *Second Report and Order* in the public interest. Comsat and AT&T have not challenged our basic policy of affording an opportunity for multiple entry by qualified applicants (*Second Report and Order*, paragraphs 16–18) or contended that other applicants should ultimately be barred from pursuing their applications or from receiving a grant in the event that they meet such policies and conditions as are applicable to them and make the requisite public interest showing. Rather Comsat and AT&T are primarily seeking a relaxation of certain conditions or restrictions directed toward their own proposals. Of course, other applicants may have an interest in how such questions are resolved. However, as stated at the outset, Comsat, AT&T, or any other applicant that desires to await a resolution of any of the questions raised in the various petitions for reconsideration is free to do so. Those that elect to pursue their applications in the interim will proceed at their own risk and in accordance with the policies and constraints specified by our *Second Report and Order*. They will, of course, be fully subject to any action on reconsideration that might affect their interests, including any changes resulting from questions raised by petitioners who have not sought stay relief.

14. In light of the circumstance that Comsat and AT&T will not be required to make any election or to conform their applications to the *Second Report and Order* prior to disposition of the petition for reconsideration, we are not persuaded that they would suffer any irreparable injury sufficient to warrant the issuance of a stay if other applications were to be processed—or even granted—in the interim. Processing of other applicants would in no way prejudice a grant of the relief Comsat and AT&T have requested on the merits in their petitions for reconsideration. Moreover, reconsideration may well be accomplished before we are in a position to make any grant.[2] In any

[2] After the applicants have apprised the Commission of their intentions, processing procedures have been established, and conforming or other amendments and/or showings have been filed, it may be some time before processing of any application is completed.

event, it is highly unlikely that any authorized system could become operational in view of the long lead time required for construction of facilities of this nature. To be sure, applicants choosing to pursue their applications pending reconsideration may achieve a head start over those electing to defer. However, while Comsat and AT&T have every right to exhaust their administrative and judicial remedies with respect to their own proposals, we do not think that they are entitled to delay others in this kind of non-comparative situation, particularly since the applications of others are not being challenged (except to the extent that AT&T supports the showing we have required of GTE).[3] See also, paragraph 6 above.

15. Further, other parties could be harmed if we were to grant the request for delay. For example, on July 25, 1972 Western Union filed amendments to its applications and requested "processing as promptly as possible." Western Union was granted a partial waiver of Section 319 of the Act on July 26, 1972 in order to permit it to contract immediately for procurement of satellites at its own risk and thereby gain "significant price and schedule benefits" (FCC 72–686). An indeterminate delay in processing might put Western Union in the position of being unable to commence operations even if it were to receive a timely grant of construction permits for satellites and launch authority, because other necessary components of its proposed system—such as earth stations and connecting terrestrial facilities—were not authorized in time.[4] In this connection, we note Western Union's assertion that the indefinite postponement sought by Comsat would require it, in order to meet its domestic service obligations, to expend funds for terrestrial facilities that could be more effectively invested in satellite facilities.

16. Finally, we believe that the public interest would be best served by processing those applicants who desire to proceed pending reconsideration. This proceeding has been pending for a number of years and the public will not receive service from the proposed systems for some time after any grant. We have had informal indications that various segments of the United States consuming public are so eager to have early access to communications satellite facilities for domestic purposes that they are exploring the possibility of leasing satellite capacity in the shortly-to-be-operational Canadian Telsat system, with a view toward applying for domestic earth stations and later converting to a domestic space segment when such facilities become operational. We have repeatedly recognized that "the satellite technology has the potential of making significant contributions to the nation's domestic communications structure by providing a better means of serving certain of the existing markets and developing new markets not now being served" (*Second Report*, paragraph 4). This conclusion

[3] We do not suggest, of course, that AT&T has abandoned any claims of electrical interference between the earth stations of others and its terrestrial facilities. Such claims would be considered in the normal course of processing.

[4] Processing of earth stations and associated terrestrial microwave facilities may be time consuming because of claims of interference with other existing or proposed terrestrial facilities, and the necessity for amendments to resolve any such problems. This has proved to be the case with respect to new terrestrial specialized carriers. Moreover, even after construction permits have been issued, construction may take a considerable period of time.

is not challenged in the petitions for reconsideration. In the circumstances, it is our judgment that the desirability of making domestic satellite facilities available to the public at an early date outweighs the considerations urged in support of an across-the-board delay.

17. In light of all of the foregoing, we find it appropriate and in the public interest to deny the broad stay relief sought by Comsat and AT&T insofar as it is requested that the Commission not entertain or process any applications for domestic satellite facilities or otherwise implement the *Second Report and Order* "pending release of a final Commission decision on reconsideration and completion of any judicial review of that final decision."

18. Since the July 25, 1972 date specified in paragraph 45 (a) and 45 (b) of the *Second Report and Order* was previously extended on the Commission's own motion pending action on the request for stay (FCC 72-645), our Order herein will prescribe a new effective date and a new deadline for the filing of statements by each of the system applicants as to its intentions with respect to the various alternatives (paragraph 9 above, and paragraph 45 (b) of the *Second Report and Order*). We are aware of discussions and negotiations that are proceeding among applicants with a view toward establishing consolidations or consortiums. While we do not intend to discourage those negotiations, we caution the participants that any consolidation or consortium that may be agreed upon will not prejudice our resolution of the issues raised by the petitions for reconsideration, and will be subject to Commission approval upon a finding that the public interest would be served thereby.

19. Accordingly, IT IS ORDERED, That:

1. The relief sought in the "Request for Stay" filed by the Communications Satellite Corporation on June 30, 1972 and in the supporting letter filed by American Telephone and Telegraph Company on July 17, 1972 IS GRANTED ONLY TO THE EXTENT REFLECTED HEREIN and IS OTHERWISE DENIED.

2. The July 25, 1972 date specified in paragraph 45 (a) and (b) of the *Second Report and Order*, which was previously extended pending action on the request for stay (FCC 72-645), IS HEREBY MODIFIED to read October 16, 1972.

3. In addition to the alternatives set forth in paragraph 45 (b) of the *Second Report and Order* applicants for domestic communications satellite systems SHALL HAVE THE OPTION of filing a statement pursuant to paragraph 9 herein.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-802

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of FRIENDLY BROADCASTING CO. For Renewal of Licenses for Radio Stations WJMO and WLYT(FM), Cleveland Heights, Ohio	Docket No. 19412 File No. BR-1844 File No. BRH-140

MEMORANDUM OPINION AND ORDER AND NOTICE OF APPARENT LIABILITY

(Adopted September 13, 1972; Released September 19, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission, by Order and Notice of Apparent Liability (FCC 72-73, released January 27, 1972) designated the above-captioned applications for hearing by reason of the existence of serious questions as to whether Friendly Broadcasting Company (Friendly) possesses the requisite qualifications to remain a Commission licensee. Among the issues designated was Issue (g), stating as follows:

> g. To determine the nature and extent of alleged violations of the Commission's Rules for which an Official Notice of Violation was issued to WJMO on February 16, 1971, and whether in light of the evidence adduced pursuant to that determination, applicant has exercised that degree of responsibility required of the licensee of a broadcast station.

Included in the designation order was a Notice of Apparent Liability for enumerated rule violations. Subsequently, the Review Board modified Issue (g) in order to permit inquiry into alleged violations of Commission Rules for which a Notice of Violation had been issued to Station WJMO on November 23, 1971. (34 FCC 2d 947, released May 19, 1972.) Now before the Commission is a petition filed by Friendly which requests that the Commission issue a Notice of Apparent Liability to Friendly for the alleged rule violations enumerated in the November 23, 1971, Notice of Violation.[1]

2. We will grant Friendly's petition. Issuance of the requested Notice of Apparent Liability will afford the Hearing Examiner, if he decides that the record in the hearing does not warrant the denial of Friendly's licenses, additional facts to consider in determining whether he should assess a monetary forfeiture against Friendly, and if so, in what amount. We wish to make clear, however, that our issuance of the Notice of Apparent Liability should have no bearing on the determination of whether Friendly is qualified to remain a broadcast

[1] Also before the Commission are Comments on the Petition for Notice of Apparent Liability, filed on June 9, 1972, by the Chief, Broadcast Bureau.

licensee, and, in accordance with our established policy, the Hearing Examiner must affirmatively resolve this latter question before reaching the forfeiture issue. See our prior opinion in this proceeding, *Friendly Broadcasting Company*, FCC 72–445, released May 26, 1972.

3. Accordingly, IT IS ORDERED, That, if it is determined that the hearing record does not warrant an order denying the captioned applications for renewal of licenses for Stations WJMO and WLYT (FM), it shall also be determined whether applicant has repeatedly or willfully violated Sections 73.93(b), 73.113(a)(3), and 73.111(a) of the Commission's Rules, or the terms of the authorization for WJMO [2] and, if so, whether an Order of Forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, in the amount of $10,000 or some lesser amount should be issued for violations which occurred within one year of the issuance of this Memorandum Opinion and Order.

4. IT IS FURTHER ORDERED, That this Memorandum Opinion and Order constitutes Notice of Apparent Liability for forfeiture for violation of Sections 73.93(b), 73.113(a)(3) and 73.111(a) of the Commission's Rules and the terms of the station authorization as specified in the Official Notice of Violation issued to Friendly Broadcasting Company on November 23, 1971.

5. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by certified Mail—Return Receipt Requested—to Friendly Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[2] The specific dates and details of each violation are enumerated in the Official Notice of Violation issued to Friendly Broadcasting Company on November 23, 1971.

F.C.C. 72M–1036

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of HAWAIIAN TELEPHONE CO. Application for Authorization Pursuant to Section 214 of the Communications Act of 1934 to Lease From Communications Satellite Corp., and Operate, Satellite Voice Circuits Between an Appropriate Earth Station, or Earth Stations, in Hawaii and an Appropriate Satellite or Satellites, Over the Pacific Ocean to Provide Communications Service Between Hawaii and Certain Points in the Pacific Area	File Nos. P–C–7435–1; P–C–7435–1–A; P–C–7435–1–A–1.

ORDER, AUTHORIZATION AND CERTIFICATE

(Adopted August 10, 1972; Released August 14, 1972)

BY THE TELEPHONE COMMITTEE:

1. The Commission is here concerned with the above-captioned application filed on May 5, 1971, and amendments thereto, filed on July 13, 1971 and January 20, 1972 by the Hawaiian Telephone Company (HTC). The application and amendments thereto request authority, pursuant to Section 214 of the Communications Act of 1934, to lease from the Communications Satellite Corporation (COMSAT), and operate, a total of thirty-seven satellite voice circuits between an appropriate earth station, or earth stations in Hawaii and an appropriate satellite, or satellites, over the Pacific Ocean connecting with like circuits between the satellite or satellites and foreign earth stations furnished by its correspondents for the purpose of providing HTC's authorized services between Hawaii and certain points in the Pacific area.

2. Application File No. P–C–7435–1 and amendment File No. P–C–7435–1–A were listed, respectively, on the Commissions May 24, 1971 and August 16, 1971 Public Notices of Application Accepted for Filing. Copies of the application and both amendments thereto were mailed to interested parties including those required by statute. No comments on the application or amendments thereto were received.

3. Specifically, HTC requests the following number of satellite voice circuits to provide service to each of the points shown below via the indicated earth stations.

Point	Number of satellite circuits requested	Overseas earth station used
Japan	14	Japan.
Philippines	8	Philippines.
Hong Kong	2	Hong Kong.
Thailand	1	Thailand.
Australia	4	Australia.
Korea	1	Korea.
Guam	7	Guam.
Total	37	

4. By the authorizations listed below, HTC is presently authorized to lease and operate 27 satellite voice circuits between an appropriate earth station, or earth stations, in Hawaii and an appropriate satellite, or satellites, over the Pacific Ocean for the provision of service between Hawaii and various points in the Pacific area as follows:

Points served	Number of satellite circuits authorized	Number of circuits operating on 6-30-72 [1]	Date of authorization	File Number
Japan	4	11	9-19-69	P-C-7435 temporary authorization expiring 8-10-72 and 1-10-73.
	7		12-10-71	
			7-20-72	
Philippines	4	6	9-16-69	P-C-7435 temporary authorization expires 8-10-72.
	4		12-10-72	
Australia	1	2	9-19-69	P-C-7475.
Hong Kong	1	0	9-19-69	P-C-7475.
Thailand	1	1	6-16-69	Temporary authorization expires 9-16-72.
Guam	5	4	12-10-71	Temporary authorization, expiring 8-10-72 and 9-20-72.
Totals	27	24	3-31-72	

[1] Since the Commission's Order, Authorization and Certificate adopted September 14, 1969, File No. P-C-7435 *et al.*, FCC 69M-1189, authorized HTC to operate a greater or lesser number of circuits than that specifically authorized to each point as long as it did not exceed its total authorization for circuits to all points, this column may indicate a greater circuit usage to a given point than specifically authorized.

5. The demand for communication services between Hawaii and points in the Pacific area is continuing to increase. HTC estimates, based on its telephone message traffic studies and the fact that the introduction of Autovon service throughout the Pacific has increased the demand for private-line circuits, that authority for additional satellite circuits will be required. In addition, HTC has received orders from the United States Department of Defense for fourteen private-line voice-grade satellite circuits between Hawaii and the following points: Japan—four circuits; Philippines—four circuits; Guam—four circuits; Korea—one circuit; and Thailand—one circuit.

6. HTC proposes to lease the satellite circuits herein at the rates and in accordance with the applicable tariffs set forth in Comsat's applicable tariffs. The total cost of the twenty-seven additional circuits requested will be approximately $102,600 per month.

7. We find that HTC has made an adequate showing of need for the requested satellite voice circuits between the appropriate earth station, or earth stations in Hawaii and an appropriate satellite, or

satellites, over the Pacific Ocean proposed to be used for the provision of HTC's authorized services between Hawaii on the one hand and Australia, Guam, Hong Kong, Japan and the Philippines and beyond on the other hand, and that a grant of authority to lease and operate these circuits, under the terms and conditions hereinafter set forth, will serve the present and future public convenience and necessity.

8. We also find that HTC has made an adequate showing of need for the establishment of a direct route for the provision of its authorized services between Hawaii on the one hand and Korea and Thailand on the other hand and IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require, or will require, a grant of authority for HTC to lease and operate the requested voice circuits between the appropriate earth station, or earth stations, in Hawaii and an appropriate satellite, or satellites, over the Pacific Ocean proposed to be used for the provision of HTC's authorized services between Hawaii on the one hand and Korea and Thailand on the other hand under the terms and conditions hereinafter set forth.

9. Accordingly, IT IS ORDERED, pursuant to Section 0.215 of the Commission's Rules on Delegation of Authority that the application File No. P–C–7435–1 as amended by File Nos. P–C–7435–1–A and P–C–7435–1–A–1 IS GRANTED, for a term commencing on the date of issuance of this Order and Authorization and ending December 31, 1972; and

(A) HTC is authorized to:

(1) lease from Comsat and operate the indicated quantity of satellite circuits, as specified in the Appendix, between an appropriate earth station, or earth stations, in Hawaii and an appropriate satellite, or satellites, over the Pacific Ocean for the provision of communication services between Hawaii and the indicated points and beyond;

(2) lease and operate greater or lesser quantities of satellite voice circuits for the provision of communication services to each of the points specified in said Appendix, provided that HTC shall not acquire more than a total of 37 satellite voice circuits pursuant to this Order and Authorization for the provision of services to all points listed in the Appendix hereto;

(3) use the satellite voice circuits authorized herein to provide message telephone service; private line telephone service; private-line telephone services and channels; facsimile (including photo) and data and program transmission services, including voice cue and contact control; leased circuits for alternate and simultaneous voice and non-voice use by defense agencies of the United States Government;

(B) This authorization shall continue on a year-to-year basis commencing January 1, 1973, unless the Commission notifies HTC to the contrary and requires the filing of a new application on or before December 1 of the then current term;

(C) The authority herein granted covers on the acquisition and operation specifically authorized above, and does not cover the acquisition or operation of any equipment which may be utilized to increase the number of normal grade voice channels derived or utilized, or to increase the number of voice messages which can be handled by each channel;

(D) The Commission's Order, Authorization and Certificate adopted September 18, 1969, File No. P–C–7435 FCC 69M–1189, IS HEREBY SUPERSEDED AND CANCELLED;

(E) The presently effective temporary authorizations listed in paragraph four ARE HEREBY TERMINATED; and

(F) This authorization is subject to whatever action the Commissmission may deem appropriate or necessary as a result of any orders entered in *ITT* v. *GTE and Hawaiian Telephone Co.*, Civil Case No. 2754, United States District Court for Hawaii.

(G) Jurisdiction is retained over all aspects of this matter, specifically including, if necessary, the reallocation of circuits in the satellite system among the various international carriers and other authorized users, if any, and from voice to record carriers, and between record carriers in order to insure that all present and future authorized carriers shall have non-discriminatory use of, and equitable access to, the communication satellite system.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Satellite voice circuits authorized

For Provision of service to:	*Number of circuits authorized*
Japan	14
Philippines	8
Hong Kong	2
Thailand	1
Australia	4
Korea	1
Guam	7
Total	37

F.C.C. 72-756

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SUBPART P, PART 89 OF THE COMMISSION'S RULES	Docket No. 19576 RM-2017

NOTICE OF PROPOSED RULEMAKING

(Adopted August 29, 1972; Released September 6, 1972)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND REID ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. Beaufort-Jasper Comprehensive Health Service, Inc. (Beaufort-Jasper) of South Carolina has filed a petition requesting amendment of the Rules to permit non-profit *health clinics* to operate land mobile radio equipment in the Special Emergency Radio Service. Beaufort-Jasper is a non-profit, federally funded (by the Office of Economic Opportunity, O.E.O.) organization which provides health care services for those persons in Beaufort and Jasper Counties, South Carolina, whose income is below the poverty level as defined by the O.E.O. Five satellite health care clinics are located within the two counties with the administrative functions located in Beaufort, South Carolina. Each of the satellite centers is staffed by a doctor, a licensed practical nurse, clinical assistant and two Public Health registered nurses. In addition, 15 land vehicles and one boat are operated for patient transportation to and from the health clinics and when necessary, to and from hospitals participating in the program.

2. Fifty to sixty on-going programs are distributed evenly throughout the United States. For example, there are current programs in Lowndes County, Alabama; New Canton, Virginia; and Bolivar County, Mississippi; to name just a few. As described by the Office of Economic Opportunity:

> Comprehensive Health Services Programs are research and demonstration health services delivery programs with a variety of unique characteristics. These significant new and innovative health programs focus upon, but are not limited to, serving the needs of the poor . . . Programs generally provide diagnostic, curative, and preventive medical and dental care, and supportive services such as laboratory, x-ray, pharmacy, social/mental health services and health education in the consumers' home, work, and community environments.

3. Beaufort-Jasper requests the necessary rule modifications to permit comprehensive health services organizations to operate radio equipment in the Special Emergency Radio Service furnishing the following communication links:

a. central facility to satellite facilities;
b. central and/or satellite facility to area hospitals;
c. central and/or satellite facility to mobile units.

Radio is necessary for the fixed, point-to-point communication links petitioner states, because telephone lines are either unavailable or are available, expensive, and unreliable during time of emergency. As an example, one of the satellite centers is located on Daufuskie Island, South Carolina, which has no telephone service. Further, Daufuskie Island was isolated and telephone lines in other areas destroyed this year by Hurricane Agnes.

4. Petitioners argue that eligibility provisions contained in the Special Emergency Radio Service

> do not permit Comprehensive Health Services to establish eligibility for authorization. It is our opinion that the reason for this exclusion was simple: Comprehensive Health Services are only recently emerging as a factor in serving the medical needs of our citizens.

5. Accordingly, we propose to modify the Special Emergency Radio Service eligibility requirements and to modify the appropriate rule sections to permit the desired communication links sought by petitioner. The language proposed by petitioner is incorporated in the Appendix attached hereto.

6. It should be noted that petitioner and like organizations meet eligibility requirements of either the Business Radio Service (as "philanthropic institutions" and to some extent as "hospitals" and "clinics") or the eligibility requirements necessary to obtain a Class A Citizens Radio Service authorization. The desired communication links sought by Beaufort-Jasper could be established under the provisions governing either of these services. Communication between the central and/or satellite facility and local area hospitals could be accomplished through an exchange of radio receivers. In view of the larger number of frequencies available in the Business Radio Service and Beaufort-Jasper's rural area location, a better grade of service could probably be achieved utilizing Business frequencies. Additionally, the larger number of Business frequencies offers greater accommodation potential than would the Special Emergency Radio Service. Comments on these possible alternatives are invited.

7. Authority for the proposed amendments is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before October 17, 1972, and reply comments on or before October 26, 1972. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments by this Notice.

8. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 89 of the Commission's Rules is amended as follows:

1. A new rule section 89.520 is added to read as follows:

§ 89.520 Comprehensive health services.

(a) *Eligibility.* Health Care organizations established in rural and/or isolated areas which show all of the following features:

(1) A central clinical facility with at least one satellite health station or primary care outpost.

(2) A radio communications plan for disaster relief.

(3) Regular or contractual arrangements with emergency and specialty hospitals in the area for admission of patients and access by clinical staff.

(b) *Eligibility showing.* The initial application from a Comprehensive Health Service shall be accompanied by a copy of its disaster relief plan, *and* a letter of concurrence and cooperation from those hospitals with which regular or contractual arrangements exist. The applicant shall also provide a full explanation of the communication facilities desired.

(c) *Class and number of stations available.* Comprehensive Health Services may be authorized to operate an unlimited number of base and fixed stations, and a number of mobile units, excluding mobile units of the hand or pack carried type, not in excess of vehicles actually engaged in Health Care operations.

(d) *Permissible communications.* Except for test transmissions as permitted by Section 89.151(e), stations licensed to Comprehensive Health Services may be used only for the transmission of messages necessary for the rendition of an efficient Comprehensive Health Service.

2. In § 89.525(f), subparagraph (17) is amended to read as follows:

§ 89.525 Frequencies available to the Special Emergency Radio Service.

* * * * * * *

(f) * * *

(17) Available for assignment only to hospitals eligible under 89.503 and to those ambulances and Comprehensive Health Services which submit a showing that they render coordination and cooperation with a hospital authorized on this frequency.

109-009—72——4

F.C.C. 72R–250

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
HOME SERVICE BROADCASTING CORP., NATICK, MASS.	Docket No. 18640 File No. BP–16478
NATICK BROADCAST ASSOCIATES, INC., NATICK, MASS.	Docket No. 18641 File No. BP–18012
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted September 12, 1972; Released September 14, 1972)

BY THE REVIEW BOARD: BOARD MEMBER PINCOCK ABSENT.

1. The first of the above-captioned mutually exclusive applications for a new standard broadcast station in Natick, Massachusetts, was filed with the Commission in September, 1964. After a long and involved series of preliminary pleadings and litigation in the United States Court of Appeals, the two mutually exclusive applications were designated for consolidated hearing by order FCC 69–904, 18 FCC 2d 911, released August 19, 1969, on issues which were several times enlarged by the Review Board and ultimately included questions as to the basic qualifications of each applicant, as well as a standard comparative issue.[1] At the conclusion of an extensive hearing, Examiner Millard F. French released his Initial Decision, FCC 72D–18, on March 14, 1972. In that document the Examiner found that a grant of the application of Home Service Broadcasting Corporation (Home Service) would best serve the public interest. He also found, on the basis of the record before him, that neither applicant was precluded under the disqualifying issues from being a Commission licensee.

2. The Review Board now has before it a joint request for approval of agreement, filed by the applicants on July 20, 1972; the Broadcast Bureau's comments, filed on July 31, 1972; and petitioners' joint reply, filed on August 10, 1972. The agreement provides for partial reimbursement by Home Service of the reasonable and prudent expenses incurred by Natick Broadcast Associates, Inc. (Natick) in the filing and prosecution of its application. The agreement also contemplates the dismissal of Natick's application and grant of the Home Service application. The joint request for approval of agreement is supported by the necessary affidavits of the principals to the agreement and appropriate substantiation of expenses incurred. (The legal expenses of Natick are shown to exceed $20,000 and the proposed reimbursement is $10,000.) Thus petitioners have met the require-

[1] In the designation order, the Commission ordered that the proceeding shall be expedited to the extent possible.

ments of Section 1.525 of the Commission's Rules. The parties contend that since this agreement would terminate the litigation and permit an immediate grant of the first standard broadcast station for Natick, Massachusetts, the public interest would be served thereby and that since neither party was found to be disqualified by the Examiner, there is no bar to the Board's approval of reimbursement to Natick. The Broadcast Bureau supports the Examiner's Initial Decision and does not object to approval of the agreement.

3. The Review Board agrees with the parties that a grant of the proposed agreement would serve the public interest, convenience and necessity. Moreover, the parties have fully complied with the requirement of Section 1.525 of the Commission's Rules. Accordingly, the agreement will be approved, Natick's application dismissed and the application of Home Service Broadcasting Corporation for a new standard broadcast station at Natick, Massachusetts will be granted. We have examined the Initial Decision and the exceptions thereto and find that those exceptions pose no fundamental questions concerning the qualifications of the applicants to be licensees of the Commission which have not been effectively dealt with by the Hearing Examiner in his Initial Decision. We will, therefore, dismiss the exceptions to the Initial Decision and other related pleadings. Moreover, since all questions concerning Natick's basic qualifications have been resolved favorably to the applicaut, we will approve the partial reimbursement of its expenses.

4. Therefore, IT IS ORDERED: That the joint request for approval of agreement, filed July 20, 1972 IS GRANTED and the agreement IS APPROVED; the application of Natick Broadcast Associates, Inc. for a new standard broadcast station at Natick, Massachusetts, Docket No. 18641, File No. BP 18012 IS DISMISSED; the exceptions to the Initial Decision and pending pleadings related thereto which are listed in the Appendix hereto, ARE DISMISSED; the application of Home Service Broadcasting Corporation for a new AM station in Natick, Massachusetts, Docket No. 18640, File No. BP 16478, IS GRANTED, and this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

(a) 4–27–72.—Statement in support of I.D. and limited exceptions—Home Service Broadcasting Corporation.
(b) 4–27–72.—Exceptions—Natick Broadcast Associates, Inc.
(c) 4–27–72.—Motion for leave to file brief exceeding page limitations—Natick Broadcast Associates, Inc.
(d) 4–27–72.—Brief in support of exceptions—Natick.
(e) 5–2–72.—Errata to exceptions and errata to brief—Natick.
(f) 5–2–72.—Withdrawal of (c)—Natick.
(g) 5–10–72.—Reply to (a)—Natick.
(h) 5–10–72.—Reply—Broadcast Bureau.
(i) 5–10–72.—Reply—Home Service.
(j) 5–24–72.—Petition for leave to file response to (i)—Natick.
(k) 5–24–72.—Response to (i)—Natick.
(l) 6–5–72.—Comment on (j)—Home Service.

F.C.C. 72-786

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	Docket No. 19163
AMENDMENT OF PART 97 OF THE COMMISSION'S RULES REGARDING LICENSING AND OPERATING REQUIREMENTS FOR THE ATTAINMENT OF THE AMATEUR EXTRA CLASS LICENSE	RM-1590, RM-1591, RM-1646, also, RM-1658, RM-1787, RM-1811, RM-1843.

REPORT AND ORDER

(Adopted September 7, 1972; Released September 13, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND H. REX LEE ABSENT.

1. On February 26, 1971, the Commission released a Notice of Proposed Rule Making in the above entitled matter. The notice was duly published in the Federal Register on March 3, 1971 (36 FR 4069) and all comments submitted in response thereto have been considered.

2. The rule changes proposed in the notice are two-fold and were suggested by the American Radio Relay League in petitions RM-1590 and RM-1591; and Mr. William K. Smith in petition RM-1646. First, we proposed amendment of Section 97.9(a) of the Commission's Rules to reduce to one year the waiting period required of holders of amateur licenses, other than Novice and Technician, before they may upgrade to Extra Class. Secondly, we proposed amendment of Section 97.25 to provide credit toward the Morse Code element of the Extra Class license examination for former holders of the Extra First Class license who have continuously held its successor licenses and who currently hold the Advanced Class amateur license.

3. Almost all of the comments received supported the proposals with most replies placing particular emphasis on the code examination credit provision. In this regard, comments generally agreed that the Morse Code requirement presents the greatest difficulty to elderly applicants and that consideration is warranted in the case of former Extra First Class licensees who were required to pass a 20 word per minute (wpm) Morse Code examination.

4. Opposition to the proposals was voiced in several comments which argued that reduction of the waiting period would increase the number of inexperienced Extra Class licensees and that allowing code credit to former Extra First Class licensees would be inconsistent with the code speed prerequisite required for license renewal. The Commission appreciates the concern expressed over the possible number of inexperienced Extra Class licensees that could result from lowering the waiting period. However, the Commission is of the opinion that the length of this period alone is not always an accurate measure of an

operator's experience and ability. In fact, it has been shown that improvement of one's operating ability and amateur technique is dependent more on regularity of operation than length of licensing time. As to the objection regarding the code requirement for license renewal, the question is not considered germane to the fundamental consideration: Is it necessary that former holders of the Extra First Class license who have remained active and who once passed a 20 wpm code examination, be required to repeat the same examination a second time? The Commission considers mandatory repetition of the code examination unfair to those Extra First Class licensees who have remained continuously licensed and the proposal was designed to eliminate this inequity. In addition, satisfying the code requirement for renewal is each licensee's personal responsibility, and the Commission is not in a position to conclude that licensees seeking code credit are so doing because they cannot satisfy the code renewal requirement under normal, everyday operating conditions.

5. A number of comments received suggested alternative and counter-proposals which are listed as follows:

a. Provide full credit for the written element of the Extra Class examination to former Extra First Class licensees who have remained continuously licensed.

b. Issue the Extra Class license to persons 50 years old or older who were licensed over 25 years ago and who qualify for, or hold, the General or Advanced Class license.

c. Issue the Extra Class license to persons 65 years old or older who were licensed over 40 years ago and who qualify for, or hold, the General or Advanced Class license.

d. Issue the Extra Class license to persons who have held an amateur General or Advanced Class license continuously for 40 years or more.

e. Provide cumulative code credit toward passage of examination elements, i.e., if an applicant passes element 1(C) and not 4(B), upon re-examination the applicant would be required to pass only element 4(B) and receive credit for previous passage of 1(C).

f. Eliminate the provision which counts operation under a foreign license toward satisfying the waiting period requirement for the Extra Class.

g. Provide code credit toward the Extra Class license for licensed holders of the Commercial First, Second, and Third Class Radiotelegraph licenses.

h. Provide code credit toward the Extra Class license for persons who held a commercial license of the First or Second Class, in lieu of the Amateur Extra First Class for the same period, between 1923 and 1933, and who obtained the Class A license in 1933 and have continuously held the same and its successor, the Advanced Class, to the present date.

In addition to the comments listed, several proposals submitted by formal petitions since the inception of this proceeding set forth the following related suggestions:

(i) Issue the Extra Class license to persons who held an amateur license prior to December, 1941, and who qualify for, or hold, a General or Advanced Class license (RM–1658).

(ii) Issue the Extra Class license to persons who held an amateur license prior to January, 1940, and who qualify for, or hold, a General or Advanced Class license (RM–1787).

(iii) Issue the Extra Class license to persons who held an amateur license 50 years or more ago and who presently hold the General or Advanced Class license (RM–1811).

(iv) Issue the Extra Class license to persons who have held the General or Advanced Class license for a period of 25 years or more (RM–1843).

6. The proposal to provide full written examination credit to former Extra First Class licensees who have remained continuously licensed, is a reiteration of one of the original proposals filed. In reply to the Commission's position that a comparison of the present Extra Class and old Extra First Class examinations showed that the level of difficulty was much less for the latter, the American Radio Relay League replied that due to the absence of training aids and instructional material during the 1923–1933 years, the level of difficulty could be considered comparable to the present Extra Class examination. In addition, the League argued that without exception, holders of the former Extra First Class license have continued to progress in technical knowledge and proficiency throughout the intervening years. The Commission does not deny the claims regarding progress made by licensees of such long standing. However, the Commission still contends that the present Extra Class license is indicative of attainment of a level of achievement distinctly above that of any previously available license. The current availability of study aids is considered to be immaterial since the scope of present examination material is much more broad than that covered 40 years ago. In addition, if the licensees in question have continued to progress in technical knowledge and proficiency as stated by the ARRL, former Extra First Class licensees should have no difficulty passing the written portion of the Extra Class examination. Accordingly, the Commission maintains that no credit should be provided for the written element of the Extra Class examination and the proposal is denied.

7. Those suggestions which request amendment of the Commission's Rules to issue the Extra Class license to holders of the General or Advanced Class license on the basis of length of license tenure and/or licensee's age, including those reflected in petitions RM–1658, RM–1787, RM–1811, and RM–1843, are also denied. As the highest grade amateur license, the Extra Class signifies that its holder has clearly demonstrated his technical qualifications based on both minimum licensing time and passage of a rigorous examination. Although the Commission realizes that length of licensed operation can be a valuable asset toward establishing one's eligibility for the Extra Class license, this in itself is not considered sufficient basis for determining the amateur's total qualifications. In addition, to allow attainment of the Extra Class license on the basis of age or term of license tenure alone, would, we believe, discourage amateurs from studying toward license achievement in keeping with the Commission's incentive licensing program.

8. The proposal regarding cumulative credit is also denied. The suggested provision of code credit to an applicant who passes the code element but not the written element of an examination, would present problems in the administration of such a procedure that would make it impracticable. To initiate such a procedure would place an extra burden on the Commission's field offices inasmuch as additional records would have to be maintained in all offices and searched to determine an applicant's past performance. Further, supervision of the code element is of such duration that, timewise, it is to the examiner and examinees' advantage alike to repeat this segment forthright.

The proposal to discount operating time accumulated under a foreign license toward satisfying the waiting period for the Extra Class is also denied. Acceptance of foreign amateur operating experience is in keeping with recognition extended to alien amateurs under existing reciprocal operating provisions and to deny accreditation of such operating experience would be totally unwarranted.

9. Finally, certain aspects of the proposals regarding code credit extension to include holders of valid commercial radiotelegraph operator licenses applying for the Extra Class license appear to merit further consideration. Section 97.25(b) of the Commission's Rules heretofore provided that an applicant for any class of amateur operator license, except the Extra Class, will be given credit for the telegraph code element if within five years prior to the receipt of his application he held a commercial radio telegraph operator license or permit issued by the Commission. However, since persons qualifying for the First Class commercial telegraph operator licenses or those persons holding any commercial radiotelegraph operator license containing an aeronautical radiotelegraph endorsement are required to pass a Commission supervised code examination equal to or higher in speed than that required of Amateur Extra Class licensees, it is considered appropriate to amend the rules to provide code credit to holders of a valid First Class commercial radiotelegraph operator license or any commercial radiotelegraph operator license that also contains an aeronautical radiotelegraph endorsement. The proposal to provide code credit to holders of the Commercial First and Second Class licenses, in lieu of the Amateur Extra First Class for the same period, between 1923 and 1933, is denied due to the unavailability of licensing records for the licenses in question.

10. In view of the foregoing, the Commission finds that the amendments to Part 97, Amateur Radio Service, as set forth in the attached Appendix are in the public interest, convenience and necessity. The authority for such amendments is contained in Section 4(i) and 303 of the Communications Act, as amended.

11. Accordingly, IT IS ORDERED, that, effective October 27, 1972, Part 97 of the Commission's Rules IS AMENDED as set forth in the attached Appendix.

12. IT IS FURTHER ORDERED, that, in addition to the three petitions set forth in the heading to this proceeding, the pending petitions of Mr. John E. Cunningham (RM–1843) filed August 9, 1971, Dr. Harold E. Stricker (RM–1811) filed June 10, 1971, Mr. Ernest L. Bracy (RM–1787) filed January 11, 1971, and Mr. Paul Williams (RM–1658) filed July 27, 1970, have been fully considered and to the extent that they are at variance with the rule changes adopted herein, they ARE DENIED.

13. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 97 of the Commission's Rules is amended as follows:

1. Section 97.9(a) is amended to read as follows:

§ 97.9 Eligibility for new operator license.

* * * * * * *

(a) *Amateur extra class.* Any citizen or national of the United States who either (1) any time prior to receipt of his application by the Commission has held for at least one year an amateur operator license of other than the Novice or Technician Class, issued by any agency of the United States Government, or submits proof that he held for a period of one year an amateur operator license at least equivalent to a General Class license issued by a foreign government, or (2) submits evidence of having held a valid amateur radio station or operator license issued by any agency of the U.S. Government during or prior to April, 1917.

* * * * * * *

2. In Section 97.25, paragraph (b) is amended, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 97.25 Examination credit.

* * * * * * *

(b) An applicant for an amateur operator license will be given credit for either telegraph code element 1(A) or 1(B) if within five years prior to the receipt of his application by the Commission he held a commercial radiotelegraph operator license or permit issued by the Federal Communications Commission. An applicant for an Amateur Extra Class license will be given credit for the telegraph code element 1(C) if he holds a valid First Class commercial radiotelegraph operator license or permit issued by the Federal Communications Commission or holds any commercial radiotelegraph operator license or permit issued by the Federal Communications Commission containing an aircraft radiotelegraph endorsement.

* * * * * * *

(d) An applicant for the Amateur Extra Class operator license will be given credit for examination element 1(C) if he so requests and submits evidence of having held the Amateur Extra First Class license, having continuously held its successor license. An applicant should present his proof in advance of the desired examination time to the Chief, Amateur and Citizens Division, Washington, D.C. 20554 and receive a letter of certification for presentation to the field office where the examination will be taken. No code credit will be given without the letter of certification.

* * * * * * *

F.C.C. 72-806

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
APPLICATION FOR EXEMPTION FROM CERTAIN PROVISIONS OF REGULATION 1, ANNEXED TO THE GREAT LAKES RADIO AGREEMENT AND WAIVER OF SECTION 83.542 OF THE COMMISSION'S RULES, FOR THE U.S. PASSENGER VESSEL "ISLAND QUEEN"

MEMORANDUM OPINION AND ORDER

(Adopted September 13, 1972; Released September 15, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission is in receipt of an application, File No. X-1105, filed by Madeline Island Ferry Line, Inc., Box 66, La Pointe, Wisconsin 54850, on behalf of the United States passenger vessel ISLAND QUEEN, 90 gross tons, 75 feet long, requesting exemption from the medium frequency (MF) requirements of Regulation 1, annexed to the Great Lakes Radio Agreement and waiver of the same requirements of Section 83.542 of the Commission's Rules to allow use of VHF radiotelephone aboard the vessel in lieu of MF radiotelephone.

2. Article 6 of the Great Lakes Radio Agreement authorizes the Commission to grant exemptions, of this nature, for a period of up to one year, if it considers that the conditions of the voyage affecting safety, the maximum distance of the vessel from shore, the length of the voyage, and the absence of general navigation hazards are such that the requirement is unreasonable or unnecessary.

3. In support of the application, Madeline Island Ferry Lines, Inc., makes the following statements:

a. the voyages are of short duration, approximately 15 minutes for a distance of 2.6 statute miles and the vessel is never more than 5000 feet from the nearest land;

b. the VHF installation provides continuous communication with several coast stations including the U.S. Coast Guard station at Bayfield, Wisconsin and other vessels operating in the area;

c. commercial shipping into the port of Ashland is being phased out, and the number of large commercial boats is decreasing;

d. the chain of islands (Apostle Islands) afford a natural protection to the vessel and trips will be cancelled if any danger exists due to extreme weather conditions; and

e. the additional radio installation would be an unnecessary expense.

4. The ISLAND QUEEN, while navigated on the authorized voyages, would be within communications range of the Bayfield U.S. Coast Guard station at all times. This station maintains a continuous

watch on 156.8 MHz. The commercial shipping into Duluth passes north of Devils Island, approximately 18 miles north of the vessel's route. The commercial vessels operating into Ashland are decreasing and Lake Carriers Association estimates that there will be approximately 35 to 40 commercial vessels into Ashland this navigation season. All of the commercial vessels operating on the Great Lakes are equipped with VHF and maintain a continuous watch on 156.8 MHz in addition to 2182 kHz. The Commission's Rules would now require the ISLAND QUEEN to be equipped with a SSB radiotelephone transmitter which may become obsolete on the Great Lakes in the near future because it appears that VHF will be the required safety system on the Great Lakes after January 1, 1975.

5. In view of the foregoing, it would appear to be unreasonable to require the ISLAND QUEEN to be equipped with a new SSB radiotelephone installation for compliance with the Great Lakes Agreement and Section 83.542 of the Commission's Rules.

6. Accordingly, IT IS ORDERED, That the United States passenger vessel ISLAND QUEEN, 90 gross tons, 75 feet in length, official number 506192 be exempt for a period of one year beginning on the date of this order, from MF radiotelephone requirements of Regulation 1, annexed to the Great Lakes Radio Agreement and the same requirements of Section 83.542 of the Commission's Rules are waived when navigated on voyages in Lake Superior between Bayfield, Wisconsin and Madeline Island, Wisconsin never more than 5000 feet from the nearest land; Provided, That the vessel is equipped with a VHF transmitter with a carrier output power of at least 15 watts and has the capability to readily reduce this power to 1 watt.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72D–42

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
NORTH AMERICAN BROADCASTING CO., INC., BOYNTON BEACH, FLA.	Docket No. 18310 File No. BP–17843
BOYNTON BEACH COMMUNITY SERVICES, INC., BOYNTON BEACH, FLA.	Docket No. 18312 File No. BP–18000
For Construction Permits	

APPEARANCES

George R. Borsari, Jr. on behalf of North American Broadcasting Company, Inc.; *A. Dale Ledbetter* and *Jason L. Shrinsky* on behalf of Boynton Beach Community Services, Inc.; and *Charles W. Kelley* on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

SUPPLEMENTAL INITIAL DECISION OF HEARING EXAMINER CHESTER F. NAUMOWICZ, JR.

(Issued June 20, 1972; Effective Date August 10, 1972, pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. On May 16, 1969, the Examiner released an Initial Decision in this proceeding wherein the application of North American Broadcasting Company, Inc. was granted and the competing applications were denied. On February 13, 1970, the Review Board, to which the case had been appealed, released a decision denying the North American application as well as the competing application of Boynton Beach Community Services, Inc. By Order released May 5, 1971, the Commission remanded the matter to the Review Board, and by Order released July 20, 1971, the Review Board remanded the matter to the Examiner for further hearing on the *Suburban* issue. On November 18, 1971, further hearing was held and the record was closed.

2. On March 7, 1972 the applicants filed a Joint Request for Approval of Agreement, and North American filed a Petition for Leave to Amend. On March 27, 1972, the Bureau filed Comments opposing grant of these pleadings. On May 11 and June 6, 1972, the applicants filed supplemental documents designed to satisfy the Bureau's objections. On June 16, 1972, the Bureau informally advised the Examiner that it did not desire to plead further, and that it no longer objected to approval of the Joint Agreement, grant of North American's Petition for Leave to Amend, and grant of North American's application.

3. The Joint Agreement contemplates that certain of the Community stockholders will withdraw and be reimbursed for their reasonable

and prudent expenses by the remaining Community stockholders. One of the three equal stockholders of North American will withdraw, transferring his interest to another North American stockholder for payment of his reasonable and prudent expenses. The North American stock will be resubscribed with 40% to the present North American stockholder who is buying out the withdrawing stockholder, 20% to the third North American stockholder, and 10% each to the four remaining Community stockholders. Thus, control of North American will not be transferred, 60% of the stock remaining in the hands of the two individuals who own 66.6% of the existing stock. North American's finances have been rearranged, but the applicant has shown a *prima facie* ability to construct its proposed station and operate it for a year.

4. The applicants have filed a full history of their negotiations, and otherwise satisfied the governing statute and rules. The public interest would be served by grant of the joint petition and dismissal of the Community application. However, before the North American application can be granted, it must be established that it has now met the pending Suburban issue.

FINDINGS OF FACT

5. North American's community surveys were conducted by its President, Marquis C. Prichard, Jr. His contacts were made during a 12-day period in December, 1969, on March 15, 1971, and on 5 days in May, 1971. Some 80 persons were contacted, including a representative selection of community leaders. The problems and suggestions arising from the interviews were assembled on a list, and a series of programs are projected to meet the needs of the community. The techniques pursued satisfied the requirements of the Commission's *Primer* on the subject.

CONCLUSIONS

6. North American has demonstrated compliance with the Commission's *Suburban* policy, and, its other qualifications having been previously established, the public interest would be served by a grant of its application.

Accordingly, IT IS ORDERED, That the applicants' March 7, 1972 Joint Request for Approval of Agreement is GRANTED, and the Agreement is APPROVED; that the Petition for Leave to Amend filed by North American Broadcasting Company, Inc. on March 7, 1972, IS GRANTED, and the amendment tendered therewith IS ACCEPTED; and that the application of Boynton Beach Community Services, Inc. IS DISMISSED.

IT IS FURTHER ORDERED, That, unless an appeal is taken to the Commission by a party or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Rule 1.276, the application of North American Broadcasting Company, Inc. IS GRANTED.

CHESTER F. NAUMOWICZ, Jr.,
Hearing Examiner,
Federal Communications Commission.

F.C.C. 72-819

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 74 (EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM, DISTRIBUTIONAL SERVICES) AS TO CERTAIN OPERATOR REQUIREMENTS	Docket No. 19488

REPORT AND ORDER

(Adopted September 13, 1972; Released September 19, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID ABSENT.

1. The Commission here considers the Notice of Proposed Rule Making in this proceeding, adopted April 5, 1972 (FCC 72-332; 37 F.R. 7530).

2. The Commission proposed deletion from Part 74 of the requirements for licensed operators whenever a restricted radiotelephone operator (referred to as an "RP") is presently allowed to perform the function, because an RP performs duties and functions not unlike those performed in other services where there are no requirements for a licensed operator and the deletion of licensed operator requirements would not be a detriment to broadcasting. We observed that these operator requirements had been included in our rules as a matter of discretion rather than statutory mandate of Section 318 of the Communications Act of 1934, as amended. In other words, the requirements for RP's performing only broadcast-related services on frequencies neither allocated to radio and television broadcasting nor disseminating radio communications intended to be received by the general public could be eliminated without contravening Clause (3) of Section 318, as amended. Section 318 pertinently provides:

> The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission: *Provided, however,* That the Commission if it shall find that the public interest, convenience, or necessity will be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except * * * (3) stations engaged in broadcasting (other than those engaged solely in the function of rebroadcasting the signals of television broadcast stations) * * *.

3. In proposing the change of operator requirements discussed in the last paragraph, there was no intention to change the requirements as to limitations on adjustments, making repairs, and other responsibility for maintenance and proper functioning of remote pickup and aural broadcast STL stations or an intercity relay which Section

13.61(h) of the Commission's Rules and Regulations requires to be performed by or under the immediate supervision of a first or second class operator. To make this amply clear, we are adding to the amendatory language to Sections 74.465(a) and 74.565.

4. All the parties filing comments favor the proposed changes. Some urge that the Commission also amend Section 13.61(g)(3) to read as follows (interlineation shows language to be deleted):

> Any of the various classes of broadcast stations other than noncommercial educational FM broadcast stations using transmitters with power ratings of 10 watts or less, remote pickup broadcast stations and ST broadcast stations, or

It would appear that similar references to remote pickup and ST broadcast stations should be deleted from Paragraphs (a)(2), (b)(2), and (d)(2) of Section 13.61 to conform Section 13.61 to the changes being made in Part 74.

5. The comments of the National Association of Broadcasters (NAB)[1] merit special attention. NAB considers "the instant proposal * * * [as] one effort toward modernizing many of the Rules set forth in Part 74" and it refers to its petition in RM-1735 "looking toward a complete and total updating of * * * Part 74, Subparts D, E, and F." Suffice it to say that we are not oblivious to the overlap between NAB's petition and this proceeding, but this is mainly superficial. The underlying considerations for this proceeding and NAB's petition are different.

6. Accordingly, the public interest, convenience, and necessity will be served by the amendments to Parts 74 and 13 as set forth in the attached Appendix. Authority for these amendments is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

7. IT IS ORDERED, That these amendments shall be effective October 31, 1972.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

APPENDIX

1. In Section 13.61, subparagraphs (a)(2), (b)(2), (d)(2), (g)(3), and (h)(3), are amended to read as follows:

§ 13.61 Operating authority.

* * * * * * * * *

(a) * * *

(2) Any of the various classes of broadcast stations, or

* * * * * * * * *

(b) * * *

(2) Any of the various classes of broadcast stations, or

* * * * * * * * *

[1] The others filing comments are: Greater New York Media, Inc.; WESO Corporation; Raritan Valley Broadcasting Company, Inc.; WGSM Radio, Inc.; Buckley Broadcasting Corporation of California; Buckley Broadcasting Corporation of Connecticut; Lee Enterprises, Inc.; Texas State Network; Warman Broadcasting, Inc.; Texas Coast Broadcasters, Inc.; Robert Burdette and Associates, Inc.; Colonial Broadcasting, Inc.; and Columbia Broadcasting System, Inc.

(d) * * *
(2) Any of the various classes of broadcast stations other than noncommercial educational FM broadcast stations using transmitters with power ratings of 10 watts or less, or

* * * * * * *

(g) * * *
(3) Any of the various classes of broadcast stations other than noncommercial educational FM broadcast stations using transmitters with power ratings of 10 watts or less, or

* * * * * * *

(h) * * *
(3) Any of the various classes of broadcast stations other than FM translator and booster stations, or

* * * * * * *

2. Paragraph (h) of Section 74.437 is amended to read as follows:

§ 74.437 Special rules relating to low power broadcast auxiliary stations.

* * * * * * *

(h) A low power broadcast auxiliary transmitting station may be operated only by a person designated by and under the control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations. Any adjustments or repairs that could affect the proper operation of transmitting units shall be made by or under the immediate supervision of an operator holding a valid first or second class radiotelephone license.

* * * * * * *

3. In Section 74.464, the headnote is revised; paragraph designator (a) and paragraph (b) are deleted, and subparagraphs (a)(1), (2) & (3) become paragraphs (a), (b) & (c) to read as follows:

§ 74.464 Posting of station licenses.

The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted so that all terms thereof are visible in a conspicuous place in the room in which the transmitter is located: *Provided:*

* * * * * * *

NOTE: The term portable-mobile as here used is intended to include any type of portable or mobile operation.

4. In Section 74.465, paragraph (a) is amended and paragraph (e) is deleted, and the citation authority amended to read as follows:

§ 74.465 Operator requirements.

(a) A remote pickup broadcast station may be operated only by a person designated by and under control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations. Any adjustments or repairs shall be made by or under the immediate supervision of an operator holding a first or second license responsible for the maintenance and proper functioning of such remote pickup broadcast station as required by Section 13.61(h) of the Commission's Rules and Regulations.

* * * * * * *

(Sec. 318, 48 Stat. 1089, as amended by P.L. 86-609, 74 Stat. 363; 47 U.S.C. 318.)

5. In Section 74.533, subparagraphs (a)(1) and (b)(4), and the citation authority are amended to read as follows:

§ 74.533 Remote control and unattended operation.

(a) * * *
(1) The operating position shall be under the control and supervision of the licensee;

* * * * * * *

(b) * * *

(4) Whenever an intermediate relay station is in operation, appropriate observations shall be made at the receiving end of the STL or intercity relay circuits at intervals not exceeding one hour only by a person designated by and under control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations.

* * * * * * *

(Sec. 318, 48 Stat. 1089, as amended by P.L. 86-609, 74 Stat. 363; 47 U.S.C. 318.)

6. In Section 74.564, the headnote is revised; paragraph designator (a) and paragraph (b) are deleted. As amended, Section 74.564 reads as follows:

§ 74.564 Posting of station licenses.

The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted so that all terms thereof are visible, in a conspicuous place in the room in which the transmitter is located: *Provided*, That, if the transmitter operator is located at a distance from the transmitter pursuant to § 74.533, the station license shall be posted in the above-described manner at the operating position.

7. Section 74.565 and the citation authority is amended to read as follows:

§ 74.565 Operator requirements.

An aural broadcast STL and intercity relay may be operated only by a person designated by and under the control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations. Any adjustments or repairs shall be made by or under the immediate supervision of an operator holding a first or second license responsible for the maintenance and proper functioning of such aural broadcast STL or intercity relay as required by Section 13.61(h) of the Commission's Rules and Regulations.

* * * * * * *

(Sec. 318, 48 Stat. 1089, as amended by P.L. 86-609, 74 Stat. 363; 47 U.S.C. 318.)

8. In Section 74.734, paragraph (c) is amended to read as follows:

§ 74.734 Unattended operation.

* * * * * * *

(c) Unless the applicant specifically requests unattended operation and makes the showing required by paragraph (b) of this section, a person meeting the requirements of § 74.766 shall be on duty at the transmitter site whenever the station is operated.

9. In Section 74.766, paragraph (a) and the citation authority at the end of this Section, are amended to read as follows:

§ 74.766 Operator requirements.

(a) A television broadcast translator station may be operated only by a person designated by and under the control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations.

* * * * * * *

(Sec. 318, 48 Stat. 1089, as amended by P.L. 86-609, 74 Stat. 363; 47 U.S.C. 318.)

10. In Section 74.866, the citation authority is amended to read as follows:

§ 74.866 Operator requirements.

* * * * * * *

(Sec. 318, 48 Stat. 1089, as amended by P.L. 86-609, 74 Stat. 363; 47 U.S.C. 318.)

F.C.C. 72-797

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of PACIFIC LUTHERAN UNIVERSITY, INC. (KPLU-FM), TACOMA, WASH. For Modification of Construction Permit	File No. BMPED-876

MEMORANDUM OPINION AND ORDER

(Adopted September 7, 1972; Released September 12, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND H. REX LEE ABSENT.

1. The Commission has before it for consideration the action of the Chief, Broadcast Bureau, pursuant to delegated authority, granting without hearing, on May 22, 1972, the above-captioned application of Pacific Lutheran University, Inc., licensee of noncommercial educational FM radio station KPLU-FM, Tacoma, Washington, for modification of the construction permit of station KPLU-FM. On June 26, 1972, King Broadcasting Company, licensee of television broadcast station KING-TV, channel 5, Seattle, Washington, filed a petition for reconsideration, pursuant to section 405 of the Communications Act of 1934, as amended, requesting reconsideration of the grant and declaratory relief.[1] King Broadcasting Company (petitioner) did not file a pre-grant petition to deny the application although the Commission gave public notice of the acceptance of the application for filing on March 28, 1972, and the unopposed application was not granted until May 22, 1972. Petitioner claims that it first learned of the pendency of the application just prior to the grant, but does not say why it could not, by the exercise of ordinary diligence, have learned of the application sooner. We find, therefore, that petitioner has not met the requirements of section 1.106(c)(1) of the Commission's rules, delimiting the conditions under which a petition for reconsideration will be granted where a pre-grant petition to deny was not filed. Nevertheless, we think that consideration of the facts relied on is required in the public interest and we will, therefore, consider the petition, pursuant to section 1.106(c)(3) of the rules.

2. In September 1971, the application (BPED-1272) of Pacific Lutheran for a construction permit to increase power and tower height of station KPLU-FM was granted, authorizing the station to operate with effective radiated power of 25 kW with antenna height above

[1] The applicant states that it responded, by letter, to the petition for reconsideration on July 11, 1972, but the Commission's records do not disclose receipt of the letter. On August 24, 1972, the applicant filed a letter in connection with this matter, enclosing a carbon copy of the letter it states it sent the Commission on July 11.

109-009—72——5

(b) * * *

(4) Whenever an intermediate relay station is in operation, appropriate observations shall be made at the receiving end of the STL or intercity relay circuits at intervals not exceeding one hour only by a person designated by and under control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations.

* * * * * * *

(Sec. 318, 48 Stat. 1089, as amended by P.L. 86-609, 74 Stat. 363; 47 U.S.C. 318.)

6. In Section 74.564, the headnote is revised; paragraph designator (a) and paragraph (b) are deleted. As amended, Section 74.564 reads as follows:

§ 74.564 Posting of station licenses.

The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted so that all terms thereof are visible, in a conspicuous place in the room in which the transmitter is located: *Provided*, That, if the transmitter operator is located at a distance from the transmitter pursuant to § 74.533, the station license shall be posted in the above-described manner at the operating position.

7. Section 74.565 and the citation authority is amended to read as follows:

§ 74.565 Operator requirements.

An aural broadcast STL and intercity relay may be operated only by a person designated by and under the control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations. Any adjustments or repairs shall be made by or under the immediate supervision of an operator holding a first or second license responsible for the maintenance and proper functioning of such aural broadcast STL or intercity relay as required by Section 13.61(h) of the Commission's Rules and Regulations.

* * * * * * *

(Sec. 318, 48 Stat. 1089, as amended by P.L. 86-609, 74 Stat. 363; 47 U.S.C. 318.)

8. In Section 74.734, paragraph (c) is amended to read as follows:

§ 74.734 Unattended operation.

* * * * * * *

(c) Unless the applicant specifically requests unattended operation and makes the showing required by paragraph (b) of this section, a person meeting the requirements of § 74.766 shall be on duty at the transmitter site whenever the station is operated.

9. In Section 74.766, paragraph (a) and the citation authority at the end of this Section, are amended to read as follows:

§ 74.766 Operator requirements.

(a) A television broadcast translator station may be operated only by a person designated by and under the control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations.

* * * * * * *

(Sec. 318, 48 Stat. 1089, as amended by P.L. 86-609, 74 Stat. 363; 47 U.S.C. 318.)

10. In Section 74.866, the citation authority is amended to read as follows:

§ 74.866 Operator requirements.

* * * * * * *

(Sec. 318, 48 Stat. 1089, as amended by P.L. 86-609, 74 Stat. 363; 47 U.S.C. 318.)

F.C.C. 72-797

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of PACIFIC LUTHERAN UNIVERSITY, INC. (KPLU-FM), TACOMA, WASH. For Modification of Construction Permit	File No. BMPED-876

MEMORANDUM OPINION AND ORDER

(Adopted September 7, 1972; Released September 12, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND H. REX LEE ABSENT.

1. The Commission has before it for consideration the action of the Chief, Broadcast Bureau, pursuant to delegated authority, granting without hearing, on May 22, 1972, the above-captioned application of Pacific Lutheran University, Inc., licensee of noncommercial educational FM radio station KPLU-FM, Tacoma, Washington, for modification of the construction permit of station KPLU-FM. On June 26, 1972, King Broadcasting Company, licensee of television broadcast station KING-TV, channel 5, Seattle, Washington, filed a petition for reconsideration, pursuant to section 405 of the Communications Act of 1934, as amended, requesting reconsideration of the grant and declaratory relief.[1] King Broadcasting Company (petitioner) did not file a pre-grant petition to deny the application although the Commission gave public notice of the acceptance of the application for filing on March 28, 1972, and the unopposed application was not granted until May 22, 1972. Petitioner claims that it first learned of the pendency of the application just prior to the grant, but does not say why it could not, by the exercise of ordinary diligence, have learned of the application sooner. We find, therefore, that petitioner has not met the requirements of section 1.106(c)(1) of the Commission's rules, delimiting the conditions under which a petition for reconsideration will be granted where a pre-grant petition to deny was not filed. Nevertheless, we think that consideration of the facts relied on is required in the public interest and we will, therefore, consider the petition, pursuant to section 1.106(c)(3) of the rules.

2. In September 1971, the application (BPED-1272) of Pacific Lutheran for a construction permit to increase power and tower height of station KPLU-FM was granted, authorizing the station to operate with effective radiated power of 25 kW with antenna height above

[1] The applicant states that it responded, by letter, to the petition for reconsideration on July 11, 1972, but the Commission's records do not disclose receipt of the letter. On August 24, 1972, the applicant filed a letter in connection with this matter, enclosing a carbon copy of the letter it states it sent the Commission on July 11.

109-009—72——5

ground level (AGL) of 144 feet. The licensee did not construct these facilities, but on March 16, 1972, filed the application now before us, proposing to increase effective radiated power to 40 kW and antenna height AGL to 149 feet. Petitioner alleges that there will be "blanketing" interference to reception of the signals of station KING–TV in an area encompassed by a circle 9/10 of a mile from the station KPLU–FM transmitter. It is stated that approximately 9,000 persons (2,700 television homes) will be affected. A blanket area is defined by section 73.315(e) of the Commission's rules[2] as the area adjacent to the transmitter of a station in which the reception of other stations is subject to interference due to the strong signal of the station in question. The applicant disputes only the size of the area in which blanketing might be expected.

3. Because station KPLU–FM has never operated with the facilities authorized by grant of BPED–1272, the net effect of operation with the facilities authorized by grant of the application (BMPED–876) here under consideration would be an increase of effective radiated power from 10 watts to 40,000 watts and antenna height AGL from 122 feet to 149 feet. Under the circumstances, we believe that there is merit in petitioner's fear that objectionable interference may be caused. Petitioner states that, in the majority of cases, the interference can be reduced to acceptable levels by means of inexpensive filters installed in the television receivers in those homes where the interference might be significant.

4. Petitioner asks that the applicant be required to take certain steps, such as individual notification to every television home within the area expected to be blanketed, warning of the "likelihood" of interference and offering to install filters free, upon request; furnishing to petitioner and the Commission a list of homes so notified; installing such filters within 60 days after receipt of complaints; reporting to KING–TV and the Commission three months and six months after operation commences the number of such complaints and the steps taken to fulfill those requests. We agree that remedial measures are indicated and we are prepared to impose certain requirements in that respect, but we are not persuaded that the public interest demands the imposition of a burden of the magnitude suggested by the petitioner. We will modify the grant to the extent of imposing a specific condition requiring the applicant to accept full responsibility for remedial measures to alleviate interference where reasonable complaints are made of blanketing interference and to take reasonable steps to inform the public as to how to identify the interference and the procedures to be followed for requesting assistance. We think, however, that it would be an unnecessary and unreasonable burden to

[2] Section 74.315(e) of the Commission's rules provides:
"Present information is not sufficiently complete to establish 'blanket areas' of FM broadcast stations, which are defined as those areas adjacent to the transmitters in which the reception of other stations is subject to interference due to the strong signal from the stations. Where it is found necessary to locate the transmitter in a residential area where blanketing problems may appear to be excessive, the application must include a showing concerning the availability of other sites. The authorization of station construction in areas where blanketing problems appear to be excessive will be on the basis that the applicant will assume full responsibility for the adjustment of reasonable complaints arising from excessively strong signals of the applicant's station."

require this noncommercial licensee to notify, individually, 2,700 television homes of the possibility of interference which, in many cases, may not occur, and thereby invite complaints which may not be related to the blanketing interference. Common experience indicates that where interference does occur, particularly of the magnitude feared by petitioner, complaints will be spontaneous. The applicant has agreed voluntarily to notification procedures and we leave the manner of notification and response to complaints to the discretion of the applicant. Should the applicant fail to fulfill its obligations, recourse is available to the Commission.

Accordingly, IT IS ORDERED, That the petition for reconsideration filed herein by King Broadcasting Company, IS GRANTED to the extent indicated and otherwise IS DENIED.

IT IS FURTHER ORDERED, That the action of the Chief, Broadcast Bureau, on May 22, 1972, granting without hearing the above-captioned application of Pacific Lutheran University, Inc., IS MODIFIED by addition of the condition set forth below and, as so modified, IS AFFIRMED.

IT IS FURTHER ORDERED, That the above-captioned application of Pacific Lutheran University, Inc., IS GRANTED, subject to the following condition:

The licensee shall have full responsibility for the adjustment, within 60 days, of reasonable complaints of interference to the reception of the signals of station KING–TV, Seattle, Washington, arising from excessively strong signals of station KPLU–FM in areas adjacent to its transmitter.

The licensee shall make reasonable efforts to inform the public how to identify blanketing interference and the procedures for requesting remedial measures.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-781

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST OF ABC FOR WAIVER OF THE "PRIME TIME ACCESS RULE" IF NECESSARY IN CONNECTION WITH LATE-AFTERNOON NCAA FOOTBALL GAMES

MEMORANDUM OPINION AND ORDER

(Adopted August 29, 1972; Released September 6, 1972)

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; AND WILEY CONCURRING IN THE RESULT; COMMISSIONER JOHNSON DISSENTING; COMMISSIONERS H. REX LEE AND REID ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission here considers a portion of a "Request for Sports Runover Waivers" filed August 21, 1972, by American Broadcasting Companies, Inc. (ABC), all relating to college football games during the latter part of 1972. The present action covers only the first two of these requests, for Saturdays, September 16 and September 30, 1972.

2. The situations involved here are similar to numerous others previously presented to the Commission: football games starting late in the afternoon, such as about 4 p.m. E.T., which, assertedly, will probably be over by 7 p.m. E.T. and thus not involve any prime-time network telecasting, but conceivably could run until shortly after 7 E.T. and thus impinge into prime time. Waiver is requested in case this should occur, so that the network-affiliated stations involved (ABC in this case) may carry the games to completion, and still present later that evening the usual three hours of network prime-time material.[1]

3. During the fall of 1971 (the first season of operation under the "prime time access rule"), this concept appeared to present no problems as far as professional football games were concerned, since these run fairly consistently between 2¾ and three hours. On the other hand, the NCAA college games, carried by ABC, appeared to vary more, with the telecast running more than three hours a greater percentage of the time. ABC asserts that there really is no problem in these cases either, noting that of its 40 NCAA football games carried in 1971, only three ran over three hours from kickoff to closing gun, with the average elapsed time of the game (plus half-time) being about 2:49; and none of the afternoon games actually ran over into prime time.

[1] This is typically a problem only where the games are in the Western part of the country and start in early afternoon local time but late afternoon in the East. Thus, two of the four Saturdays in September do not involve waiver.

4. To minimize the problems which could be involved, ABC has changed its scheduling practice somewhat. The actual telecast, in cases where this could be a problem, will start at 3:30 p.m. E.T., and will include pre-game and post-game segments as well as the game itself. ABC believes that all of this material should be completed in the allotted 3½ hours, or by 7 p.m. E.T. It appears, from the information received from ABC's counsel, that the "pre-game show" will not be a full half-hour, so that the actual kickoff of the game (following the pre-game show, introduction of players on the field, etc.) will be no later than 4 p.m. E.T. ABC's request is for a blanket waiver, in case it should be necessary, for telecasts involving NCAA football games where the telecast will start no later than 3:30 p.m. E.T., or double-headers where the second game will start no later than 4 p.m. E.T. (some of which will be carried at unspecified dates later in the season). Waiver is also asked for the December 30, 1972 Gator Bowl game, scheduled to start at 4 p.m. E.T. but without any pre-game show. In the case of the 3:30 contests, ABC suggests that the blanket waiver be conditioned on not using any "runover" time after 7 p.m. for any *post-game* material.

CONCLUSIONS

5. In past decisions concerning requested waivers of the rule for possible sports "runovers", we have urged the networks to be realistic in their scheduling of such events. As far as appears, ABC has been reasonably diligent in its efforts along that line, reflected in its general scheduling arrangement; and grant of a general waiver for the 3:30 contests may ultimately be appropriate.

6. However, before we take such action, we believe it desirable to see how the arrangement works out in practice, in the two games scheduled for September which involve late-afternoon times. Accordingly, the waiver granted herein applies only to the first two dates mentioned, September 16 and September 30, 1972.

7. In view of the foregoing, IT IS ORDERED, That stations affiliated with (or commonly owned with) the American Broadcasting Companies, Inc. television network MAY CARRY TO COMPLETION, but not including any post-game material, NCAA football games carried by ABC on September 16 and September 30, 1972, without having any of the time count against the three hours of prime-time network material permitted under Section 73.658 for stations in the top 50 markets, provided the telecast starts no later than 3:30 p.m. E.T.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-800

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
RCA GLOBAL COMMUNICATIONS, INC.
Proposed Revision to Tariff F.C.C. No. 58
Establishing a Rate for 50 kBS Service
Between San Francisco, Calif., and
Sydney, Australia

MEMORANDUM OPINION AND ORDER

(Adopted September 12, 1972; Released September 13, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, JOHNSON, AND HOOKS ABSENT.

1. The Commission has before it: (a) revisions to its Tariff F.C.C. No. 58 [1] filed by RCA Global Communications, Inc. (RCA) on August 4, 1972, now scheduled to become effective September 14, 1972; [2] (b) a Petition to Reject or Suspend filed by ITT World Communications Inc. (ITT) on August 21, 1972; and (c) a reply to the ITT opposition filed by RCA on August 28, 1972. The proposed filing was made to establish rates and regulations applicable to Special Satellite Channels—Schedule Eight between San Francisco, California and Sydney, Australia. Special Satellite Channels—Schedule Eight are described as channels having an equivalent carrier spectrum suitable for wideband data transmission at modulation rates of 50 kilobits per second (kBS) and are offered at $77,000 per month.[3]

2. ITT alleges in its petition that the RCA filing is: (1) unjust or unreasonable under Section 201(b) of the Communications Act; (2) in violation of Section 201(c)(5) of the Communications Satellite Act; (3) discriminatory under Sections 202(a) of the Acts and 201(c) of the Satellite Act; and (4) not compensatory, even assuming that RCA were not required to use a composite cable satellite rate in computing its costs. ITT further alleges that the filing is not in compliance with the Commission's decision in the *48 kHz Case*, 30 F.C.C. 2d 101 (1970), affirmed 29 F.C.C. 2d 493 (1971) which held that the charges for wideband channels and the equivalent spectrum offered as individual voice grade channels should be established at substantially the same level.

3. In its Transmittal Letter accompanying the filing, RCA stated that the proposed offering is being made via satellite only because it does not believe that it would be practical to offer this service by other

[1] Specifically, 474th Revised Page 1, 18th Revised Page 6AAA, 18th Revised Page 6ABA.
[2] Originally scheduled to become effective September 4, 1972 but voluntarily extended under Special Permission No. 6629.
[3] The staff requested supplemental data to enable it to evaluate the filing. RCA supplied this information and the staff is satisfied that Section 61.38 of the Rules has been complied with.

means at this time. RCA alleges that the only trans-Pacific cable facilities to Australia are foreign owned and the existing COMPAC cable does not have the capacity required to accommodate the contiguous bandwidth necessary to provide wideband data transmission. ITT contends that this is contrary to *48 kHz* in that the 48 kHz channel charges fail to reflect a composite of both cable and satellite costs, and to that extent, they do not properly reflect the economies made possible by satellite communications. 30 F.C.C. 2d 122.

4. In *Authorized Entities and Users*, 4 F.C.C. 2d 421, 433, we stated that to make the economies of the satellite system available to all users, the cost figures over a particular route were to be composited from the costs for all transmission modes over that route. In *48 kHz*, the respondents contended that the wideband service could not be provided by cable and we found that it could and that these cable costs would have to be composited with the satellite costs. In this instant filing, RCA contends not that it cannot be provided over a cable but that it cannot be practically provided over the presently available facilities and that the compositing of costs to justify a hypothetical cable route would not be in the public interest or result in a reflection of economies of satellite communications. RCA submits that the Commission specifically recognized that a requirement might exist where a satellite-only rate would be justified by citing the Petition for Reconsideration in Authorized Users, 6 F.C.C. 2d 593, wherein we stated:

> The approach we took on rates . . . does not, of course, preclude the establishment of satellite rates, as distinguished from a composite rate, where in the public interest.

RCA contends that this principle should be applied in the instant case because the alternative approach of developing a composite rate by considering additional costs for facilities which are neither available nor required would produce an inflated and unrealistic revenue requirement.

5. We do not have enough information before us to conclude that the proposed RCA rate is lawful or unlawful. This normally would be cause to suspend the tariff revision and institute an investigation. However, in this case, the critical question is the applicability of the compositing principle. This is mainly a question of policy which remains to be resolved not only in the narrow context of the instant rate proposal, but on a much broader basis. To suspend the instant rate might not be in the public interest because it would effectively deprive service to an agency of the United States government. We are, therefore, allowing the RCA filing to become effective. However, steps will be taken, in a subsequent proceeding, to resolve the policy question. At that time, we will examine its application to the RCA 50 kBS rate and take whatever measures are appropriate.

Accordingly, the Petition to Reject or Suspend filed in this matter by ITT is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-804

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of REGINALDO ESPINOZA, II For Renewal of License of Station KRDD, ROSWELL, N. MEX.	Docket No. 19208 File No. BL-12873

MEMORANDUM OPINION AND ORDER

(Adopted September 13, 1972; Released September 19, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID ABSENT; COMMISSIONER JOHNSON DISSENTING.

1. Under consideration are: (a) a letter dated September 3, 1971, received September 7, 1971, from Reginaldo Espinoza, II (licensee) in which he requests reconsideration of the Order, FCC 71-404, released April 26, 1971 (29 FCC 2d 180), designating the above-captioned application for renewal of license for hearing; and (b) an opposition to such request filed September 22, 1971, by the Chief, Broadcast Bureau; (c) an order FCC 72-334, released April 7, 1972 directing that an inspection be made of Station KRDD Roswell, New Mexico; (d) a statement in response to such order, filed April 12, 1972, by the Chief, Broadcast Bureau; (Bureau); (e) an additional statement, filed May 3, 1972 by the Bureau; (f) an answer to the Bureau dated June 6, and filed June 12, 1972, by the licensee.

2. In the above mentioned hearing Order of April 26, 1971, the issues designated for hearing inquire into the circumstances respecting licensee's failure to file timely reports and applications and to respond to official correspondence, the nature and extent of violations of the Rules cited in an Official Notice of Violation issued May 8, 1970, the efforts to ascertain community needs, and whether, in light of the evidence, applicant can be relied upon to fulfill his licensee responsibilities.

3. In a letter dated September 3, 1971, the licensee alleged that the deficiencies had been corrected and requested that the designation for hearing be reconsidered and the renewal application be granted. At about the same time he submitted such letter, the licensee appeared before the Hearing Examiner on September 10, 1971, at a prehearing conference, on his own behalf because he could not afford counsel. At the conference, he stated that much of his difficulties respecting station operation stemmed from a fire which occurred about a month and a half prior to the time the station was inspected; that the fire at his office in Roswell destroyed most of his records; that nothing at the office was salvaged and the loss was not covered by insurance; that KRDD is a Spanish language station, and that he had experienced

considerable difficulty in finding licensed operators who understood Spanish; that currently there were three on the staff who knew the language; and that, if he could obtain a renewal of license, he could expend some money on equipment and bring the station up to standard. The licensee was then informed by the Examiner that the prehearing conference was not for the purpose of taking testimony; that evidence in mitigation could be presented at the hearing or in a petition for reconsideration; and that if such a petition was filed, licensee should bring his renewal application up to date, making it full and complete in all particulars, supplying matter not previously submitted, including a community survey. Licensee indicated that he did propose to seek reconsideration and indicated that he would submit an updated application.

4. On November 5, 1971, licensee filed a petition for leave to amend, attaching a revised renewal application and community survey. By Order, FCC 71M–1815, released November 22, 1971, the Hearing Examiner granted leave to amend and accepted the tendered amendment. Thereafter, to assist the Commission in evaluating the request for reconsideration on the merits, ascertain the current operational situation, and determine whether the station was currently in compliance with the Rules, we directed the Bureau, by Order released April 7, 1972, to have an inspection made of the station and to file a report of the results thereof in the record of this proceeding, serving a copy upon the licensee. The licensee was authorized to file comments on the report within fifteen days after its filing, and action in this proceeding was ordered held in abeyance to provide an opportunity to consider such material.

5. Pursuant to the above-mentioned Order of April 7, the Bureau submitted a statement containing a report of an inspection which had earlier been made of Station KRDD on February 23, 1972, as being a relatively current report on the status of the station's compliance with the Commission's Rules. That report contained an official Notice of Violation, dated March 8, 1972, and indicated some eighteen rule violations, dealing mainly with failure to maintain program and maintenance logs properly, lack of a First Class Operator, and improper antenna tower lighting equipment.[1]

6. On May 4, 1972, a response was made to the Official Notice of Violation by Southwest Communications, the engineering firm retained by licensee. Because it failed to comply in certain respects with filing requirements, the letter was returned on May 19, 1972, by the Commission's Secretary with instructions as to proper filing. Thereafter, the licensee filed a proper response by letter dated June 6, 1972. The licensee submitted a response to each citation, setting forth the various steps it has taken to correct the violations shown in the Notice, and stating that it has hired a First Class Radiotelephone operator, and

[1] In the above-listed further pleading of May 3, the Bureau requests that the pending hearing issues be "clarified" to include consideration of the current alleged violations and failure to respond timely to the Notice. The Bureau notes, however, that by letter dated April 11, 1972, licensee acknowledged receipt of the Notice and advised that Southwest Communications, a communications engineering-contracting service, had been hired to prepare and submit a formal report to be sent within five days, but that such report had not yet been submitted.

that defective equipment has been or is in process of being repaired or replaced. In addition, the licensee states that the proof of performance for 1972 has been completed and will be forwarded to the Denver Office, and that a new staff and full-time manager have been hired, with both an engineer and consulting engineer now employed.

7. In substance, the situation at present appears to be that some of the deficiencies in operation noted in the 1970 inspections still obtained or had recurred at the time of the February 1972 inspection, but they have now been corrected and a virtually new operation has been undertaken. Further, it appears from the pleadings and the record that certain mitigating circumstances exist which should be taken into consideration. We have reference to such matters as the fire that destroyed licensee's equipment and records, and the poor financial condition of the station. We are persuaded that a hearing at this time would not serve the public interest. It appears that applicant has, by its submission of a revised renewal application supplying data previously lacking, resolved questions relative to the adequacy of his survey of community needs and otherwise made his renewal application substantially complete. In these circumstances, taking into account the reasons underlying applicant's past difficulties and all other considerations, including licensee's current efforts to improve his operation, we believe that the public interest would be best served by termination of this proceeding and the issuance of a one-year renewal of license, with the condition that the licensee demonstrate at the end of such term that he has modified his operating procedures to assure that he will make prompt response to Commission inquiries and will comply with all requirements in the future. At the end of such period we will be in a position, based upon licensee's performance in the intervening time and the renewal application he will then file, to make a determination as to his future status as a licensee.

8. Accordingly, IT IS ORDERED, That the request for reconsideration filed September 7, 1971, by Reginaldo Espinoza II IS GRANTED to the extent indicated herein, and IS OTHERWISE DENIED; and

9. IT IS FURTHER ORDERED, That the application of Reginaldo Espinoza II for renewal of license of Station KRDD, Roswell, New Mexico IS GRANTED FOR A PERIOD OF ONE YEAR, which period shall commence on the date of release of this Memorandum Opinion and Order; subject to the condition that the licensee demonstrate at the end of such term that he has modified his operating procedures to assure compliance with Commission requirements in the future; and

10. IT IS FURTHER ORDERED, That the Order FCC 71–404, released April 26, 1971, designating this proceeding for hearing IS SET ASIDE; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-757

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 97 OF THE COMMISSION'S RULES CONCERNING THE LICENSING AND OPERATION OF REPEATER STATIONS IN THE AMATEUR RADIO SERVICE	Docket No. 18803 RM-388, RM-1087, RM-1209, RM-1542, RM-1725.

REPORT AND ORDER

(Adopted August 29, 1972; Released September 8, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONERS H. REX LEE AND REID ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission adopted a Notice of Proposed Rule Making in the above entitled matter on February 26, 1970, which was published in the Federal Register on March 5, 1970 (35 FR 4138). Interested parties were invited to file comments on or before May 15, 1970, and reply comments on or before June 1, 1970. The time for filing comments and reply comments was subsequently extended to June 15, 1970 and July 7, 1970, respectively.

2. The Notice proposed to specifically provide rules for the operation of amateur stations which receive and automatically repeat the radio signals of other amateur stations. Although the rules have not specifically referred to amateur repeater stations, per se, the Commission has licensed hundreds of repeater stations to operate under the rules applicable to amateur radio stations in general. We are of the opinion that this activity is in keeping with the fundamental purpose of the Amateur Radio Service expressed in the principles set forth in Section 97.1 of the Rules, particularly with respect to paragraphs 97.1(b) and (c):

> (b) Continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art.
>
> (c) Encouragement and improvement of the amateur radio service through rules which provide for advancing skills in both the communication and technical phases of the art.

The high quality of the technical content of the comments received is evidence that the basis and purposes of this Service are being served by this amateur repeater activity.

3. Both formal and informal comments were received from numerous individuals and amateur radio organizations. Since the comments received were so numerous, it is not practicable to discuss each herein. However, every comment has been given careful consideration by the Commission. Many include statements describing the value

of repeater stations to the Service and predict further technological developments and increasing benefits if their usage is permitted to continue unhampered by the imposition of unnecessary restrictions. Generally, they heavily favor the adoption of specific rules governing the licensing and operation of repeater stations, but not necessarily in the manner proposed in the Notice.

4. The Commission finds that amateur terrestrial repeater stations are useful for increasing the reliable range of VHF and UHF [1] vehicular and hand-held mobile stations in conducting intro-community amateur radiocommunication, and for effecting emergency radiocommunication which possibly could not otherwise be conducted on the amateur bands. Again, this is in keeping with Section 97.1 of the rules:

> (a) Recognition and enhancement of the value of amateur service to the public as a voluntary non-commercial communication service, particularly with respect to providing emergency communications.

Accordingly, we believe that rules to provide for the operation of repeater stations are desirable. It is apparent that repeater stations have become a significant part of the Service. There is no reason to expect their growing popularity to quickly diminish, nor is there reason to anticipate the innovative skills that amateur operators have demonstrated in designing and planning repeater systems to suddenly dissipate. We would prefer to have this activity continue in an orderly fashion, in a spirit of cooperation among amateur operators. Just as it was not possible to foresee the interest in repeater stations, it is similarly impossible to fully predict the eventual products of the amateurs' imaginative application of the electronic and radio arts. For this reason, the rules adopted herein are intended to introduce provisions into the rules which permit the flexibility needed in the Service, and to provide the licensing framework for accommodating future technical and operational advancements in amateur radiocommunication. Despite our efforts to forecast future needs and provide appropriate rules, we recognize that in all probability further advancements in remote control and automatic control technology will necessitate additional amendments. We urge interested parties having information and suggestions in these areas to submit them to the Commission for consideration.

5. Beginning July 1, 1973, a separate station license will be required for every amateur repeater station regardless of when it was first licensed. Applications for new, modified or renewed repeater station licenses must meet the new requirements upon the effective date of the new rules. These stations will be identified by a call sign having the distinctive prefix WR. In order to qualify for a repeater station license, the applicant must be at least a Technician Class licensee and must submit certain data regarding the technical and operational provisions included in his proposed station. The requirements for this showing are intended to verify that the applicant has given careful

[1] Article 2, Section III of the I.T.U. Radio Regulations defines VHF as Band 8, 30–300 MHz (Metric waves) and UHF as Band 9, 300–3000 MHz (Decimetric waves).

consideration to the planning and design of his repeater station, addressing particular attention to the geographical area to be covered. We desire that the applicant for a repeater station license predict by analysis the approximate coverage area needed for intra-community amateur radiocommunication, using the desired mode of emission. After the repeater is licensed and in operation, the licensee should verify his assumptions of community radiocommunication requirements and his prediction of the station coverage through testing and operating experience, and make appropriate adjustments based thereon. The foregoing approach should be accomplished giving due consideration to minimizing harmful interference to other amateur radio operators in the same or nearby communities desiring to use the same frequency, or frequency bands.

6. Upon reviewing the comments, and in consideration of the increasing complexity of systems described in applications received by the Commission for remotely controlled repeater stations, we recognize the need emerging in the Service for a licensing structure that facilitates combining several amateur radio stations into a radiocommunication system. It has not been uncommon to receive an application for a proposed "station" having fifty or more remote control points and a half-dozen remote receiving sites which involve a multiplicity of transmitters and frequencies. This is clearly a complex system comprised of special purpose stations, each performing one or more functions in a network. A thorough review of this matter has been undertaken, and the resulting Commission determination is reflected in the amended rules. The review indicated the difficulty in providing operating and licensing rules for the Service without taking into account the functions performed by various types of specialized amateur radio stations. Accordingly, we are adopting a structure of definitions and station privileges related to the major functions performed by such specialized stations. Under this concept, and with the one exception of repeater stations, a single station may be licensed for one or more special purpose privileges according to the functions to be performed by that station. This permits a licensee to combine several stations into a system. We feel this "building block" approach is consistent with the increasing complexity of amateur system networks, will provide the necessary flexibility, and at the same time, retain the means for the Commission to exercise its requisite obligations.

7. Every amateur radio operator is affected by the adoption of this licensing structure to some degree. For example, an amateur's license which now specifies the location of his station and indicates his operator privileges, i.e., Technician, General, etc., will also include the privileges authorized for his station. As a minimum, the station privilege would be "primary station." Every operator must have a primary station. This is necessary so that every amateur will have a call sign with which he may identify his radiocommunication, if required. Normally, the primary station license will be issued for the amateur's home address. However, those amateurs not having a permanent address within the United States, its territories and possessions should furnish the address of a relative or friend who will

receive and forward mail to the licensee. Every licensee will be accountable for mail sent to the address of record given for a station license. Therefore, every amateur must have a license for a primary station, and this license will also authorize his operating privileges. The license may also contain additional station privileges for the same station. Licensees other than those desiring remote control or repeater station privileges will have their licenses updated upon renewal.

8. The various kinds of additional station privileges, some of which may be combined with a primary station license, are: repeater station, control station, auxiliary link station and secondary station. Repeater station privileges may not be combined with another station license because of their distinctive call sign assignment. A control station privilege authorizes the station to excercise control over a remotely controlled station. An auxiliary link station authorizes a station to relay a radio signal point-to-point within the same system network. Either or both may be combined with a primary station for the same location. A secondary station license is for a station at a different location, such as a vacation home, and is obviously a license issued in addition to the primary license. These various privileges may be added to an existing license by modification, or at renewal, upon submittal of the appropriate information.

9. The rules for remote control proposed in the Notice have been relaxed in three major areas. First, the control operator may be any qualified amateur designated by the licensee. Secondly, provisions are adopted for any repeater station authorized to be operated by radio remote control to also be so operated from a portable or mobile station, provided all of the required monitoring and control functions can be satisfactorily performed, from either the authorized control point or from the mobile or portable control station. This will enable a licensee to make use of his own repeater station while he is operating mobile or portable. Thirdly, since the comments frequently and persuasively mention terrain and other considerations which make necessary "multiple-hop" control links, we are deleting the proposed limit to a direct (single-hop) control link and providing for auxiliary link stations, which may be authorized for this and also for other point-to-point intermediate relay applications, such as a relay between a remote receiving site and a repeater station.

10. We have considered the advisability of adopting rules for control links based upon current amateur control link techniques, versus rules which would allow greater latitude. We find the latter approach to be more flexible and appropriate to the amateur service, but it requires a showing of the design and operational features of an applicant's proposed control system network. The applicant must submit a diagram showing the interrelationship of all of the stations and control points in the system network configuration. The station license will list the control points and the control stations authorized to operate the remotely controlled station.

11. In the past, we have permitted a very broad interpretation of the term "wire" remote control as applied to Part 97 of the rules, including the use of commercial telephone lines and command signal techniques. This has exempted stations employing relatively sophisti-

cated and sometimes questionable approaches in the design and operation of wire remote control links, from submitting information on their proposed station with their applications. Upon the effective date of this Report and Order, only stations having the most elementary form of interconnection comprised of electrical conductors directly between the transmitter and the control devices, and having all of the elements of the station located on the same premises, will be considered as not constituting remote control. Applicants proposing to use any other form of remote control must submit the information required by Section 97.41. Stations other than repeater stations now authorized to be operated by wire remote control and not in compliance with the licensing requirements of the amended rules may continue to operate under their present authorization until the expiration date of their current station license.

12. Restriction of repeater operation to specific portions of the amateur bands above 50 MHz has not been adopted as proposed in the Notice. Approximately one-half of the Amateur VHF bands and 8 MHz of the 420 MHz band is being authorized for repeater usage. The Commission is persuaded by the comments and by observation that regional and national frequency planning and coordination by amateur radio operators themselves can result in the best spectrum utilization appropriate to the service. However, we are prepared to reverse this decision should plans and their implementation not occur within a reasonable period. To solve the problem presented by Technician Class privileges in only one-half of the 146–148 MHz sub-band authorized for repeater operation, the Rules are amended to permit Technician Class licensees to also operate in the entire 145 to 148 MHz segment.

13. We are of the opinion that terrestrial repeater stations should be utilized only for intra-community radiocommunication and should not be used, directly or indirectly, as a means to circumvent the rules regarding authorized amateur operator privileges for the different classes. Repeating a lower class operator's radio signal from one frequency band into another band having higher operator privilege requirements is unfair to those operators who have properly qualified for the higher requirements. For these reasons, we are persuaded to adopt the provisions of the Notice prohibiting multiband, crossband and linked repeater operation even where operator privileges would permit it. Similarly it is not in the interest of spectrum conservation to utilize crossband and multiband operation. Many comments argued against the proposed rule to prohibit linking repeaters. In weighing these arguments against the desire to conserve spectrum and to encourage the use of amateur terrestrial repeaters for intra-community coverage, we find that a majority of situations can be accommodated with a maximum of two linked repeaters. Therefore, two repeaters may be linked together, and under certain circumstances as provided for in Section 97.89(c), more than two.

14. As pointed out by a large number of respondents the changes proposed by the Notice for defining the maximum authorized transmitter power for an amateur station would affect a much broader segment of the Service than those pursuing an interest in repeaters. For that reason, action on this topic is postponed with the intention of

making it the subject of a future rule-making proceeding as recommended in the comments submitted by the American Radio Relay League and others.

15. The proposed 600 watt input power limit on repeater transmitters is not being adopted herein as a means of regulating a reasonably balanced receive-to-transmit repeater coverage. A decision is made to incorporate into Section 97.67 the provisions of Section 324 of the Communications Act of 1934, as amended, to emphasize its particular applicability to amateur terrestrial repeater stations. We conclude that a repeater station which transmits a signal at many times the range over which it is capable of receiving would be in violation of the Act. In reviewing several frequency plans proposed for the VHF bands, we observe that a typical plan would allocate about one to two dozen frequency channel pairs per megahertz. With limited channels available, the possibility of interference between repeater stations in adjacent communities desiring to use the same frequencies must be considered. For this reason, limits are established for effective radiated power from a repeater station antenna, based upon the power normally required for reception by a typical vehicular mobile station over a nominal community coverage area. A major consideration in establishing these limits is the encouragement of the practice of achieving the desired coverage through the use of a low power transmitter in conjunction with an antenna located at an optimum height above average terrain. The operation of a control station or an auxiliary link station which does not use directional antennas in conjunction with low transmitter power to minimize the possibility of harmful interference is not considered good amateur practice, and will be carefully evaluated by the Commission if proposed.

16. As stated in the Notice, Section 310(b) of the Communications Act requires, in effect, that the licensee of a repeater station maintain supervision and control of both the technical and operational performance of his station. Although several of the comments addressed this topic, as do RM–1542 and RM–1725 filed by Mr. Ken W. Sessions, the Commission is not ready to make a determination of rules for automatically controlled stations in the Service. We do not consider access to a repeater station controlled by the users via coded signals alone on the receiving frequency to be active supervisory control by the control operator. Such coded signals are permissible for secondary control but are not required.

17. Comments were received in response to the additions to Section 97.87 proposed in the Notice, correctly noting that the implications extend beyond that of properly identifying a repeater station. All stations would be affected. However, the proposal reflected the policy position then held by the Commission, and the comments prompt a review of the matter. The amended section is a means to accomplish two partially conflicting purposes: rapid identification of a station causing interference to another service, and identification of the operator in order to determine his class of license for verification of his privilege to operate within a restricted sub-band. Under

the amended rules, a visiting operator must use the call sign of the station he is operating. Should his class of operator privilege exceed that of the station licensee, and should he desire to operate the section within the sub-bands available to him but not to the station licensee, he must identify with both the station call sign and his own. Provision for automatic identification of a repeater station by telephony as well as telegraphy is adopted. The requirement for repeater identification is designed to provide assurance that a short single transmission or a short exchange of transmissions will include at least one repeater station call sign transmission.

18. Received comments highly favor simplified logging. The section has been restructured and requires only a minimum of information to be recorded in written form. The proposed requirement for recording all installation, service or maintenance work in the station log is deleted. Although the use of such a routine is encouraged, we find that since the station licensee is responsible for the technical performance of the station, the procedure to be employed to meet this obligation is a matter of personal choice.

19. A new requirement is added for the identification of the antenna and/or transmission line associated with a remotely controlled transmitter in order to facilitate contacting the station licensee should the need arise—a process which has been time consuming in some instances where the radiating antenna of a station in violation has been identified by radio location techniques. To minimize the prospect of interference to radiocommunication already in progress on a given frequency, the rules to require continuous monitoring of a remotely controlled transmitter are expanded to require continuous monitoring of the frequencies while in operation, which is good operating practice. Frequencies above 225 MHz used for remotely controlling a transmitter are exempted from the continuous monitoring requirement since the interference potential with UHF is much less than with VHF.

20. Section 97.89 has been reorganized editorially and the invitation to incorporate into the text a reference to Appendix 2 is taken. Numerous comments were concerned with the omission in the Notice of provisions for various test, control and experimental transmissions. The amended rule includes these provisions.

21. The Section containing definitions, § 97.3, has been expanded to include those terms frequently used in the amendments. They are defined in order to minimize possible ambiguities in the statement of the rules.

22. The rules adopted herein do not proscribe amateur radio stations, including repeaters, from being automatically interconnected to a telephone exchange system. Amateur licensees should be aware that rules governing that type of facility will be considered for other of the Commission's radio services in a separate proceeding. It has been brought to the Commission's attention that numerous violations of Sub Part E of Part 97 of the Rules have taken place through the use of such interconnection, which facilitates communication from moving vehicles. Therefore, it may be necessary at some future date

109-009—72——6

to examine in detail the current usage of "autopatch" facilities; and possibly restrict the use of such devices in the Amateur Radio Service. Pending the adoption of any such regulations, amateurs are warned that usage of such interconnecting devices must be limited to amateur radiocommunication and may not be used for any type of business communication.

23. These amendments shall become effective upon the date stated in paragraph 25. Existing remotely controlled stations may continue to operate under their current authorizations until midnight local time June 30, 1973, or until the expiration date of their license, whichever occurs first. All new and renewed stations must comply with the rules as amended. Applications for all stations will continue to be filed on Forms 610 or 610–B, as appropriate. Parties desiring instructions for completing applications requiring additional showing may obtain same upon written request addressed to the Chief, Amateur and Citizens Division, Federal Communications Commission, Washington, D.C. 20554.

24. We find the attached amendments to the rules are necessary and desirable for the execution of the Commission's duties. Authority for adoption of these amendments is contained in Sections 4(i) and 303 of the Communications Act of 1934 as amended.

25. Accordingly, IT IS ORDERED, that effective October 17, 1972, Part 97 of the Commission's Rules IS AMENDED as set forth in the attached Appendix. IT IS FURTHER ORDERED, that in addition to RM–388, RM–1087, and RM–1209, the pending petitions of Mr. Ken W. Sessions, Jr., RM–1542, filed December 8, 1969, and RM–1725 filed December 7, 1970, have been fully considered and, to the extent that they are at variance with the rule changes adopted herein, they are DENIED.

26. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 97 of the Commission Rules is amended as follows:

1. Section 97.3 is revised to read as follows:

§ 97.3 *Definitions*

The following definitions are used in this part:

(a) *Amateur Radio Service.* A radiocommunication service of self-training, intercommunication and technical investigation carried on by amateur radio operators.

(b) *Amateur radiocommunication.* Non-commercial radiocommunication by or among amateur radio stations solely with a personal aim and without pecuniary or business interest.

(c) *Amateur radio operator.* A person interested in radio technique solely with a personal aim and without pecuniary interest, holding a valid Federal Communications Commission license to operate amateur radio stations.

(d) *Amateur radio license.* The instrument of authorization issued by the Federal Communications Commission comprised of a station license, and in the case of the primary station, also incorporating an operator license.

Operator license. The instrument of operator authorization including the class of operator privileges.

Station license. The instrument of authorization for a radio station in the Amateur Radio Service.

(e) *Amateur radio station.* A station licensed in the Amateur Radio Service embracing necessary apparatus at a particular location used for amateur radiocommunication.

(f) *Primary station.* The principal amateur radio station at a specific land location shown on the station license.

(g) *Military recreation station.* An amateur radio station licensed to the person in charge of a station at a land location provided for the recreational use of amateur radio operators, under military auspices of the Armed Forces of the United States.

(h) *Club station.* A separate amateur radio station for use by the members of a bona fide amateur radio society and licensed to an amateur radio operator acting as the station trustee for the society.

(i) *Additional station.* Any amateur radio station licensed to an amateur radio operator normally for a specific land location other than the primary station, may be one or more of the following:

Secondary station. Station licensed for a land location other than the primary station location, i.e., for use at a subordinate location such as an office, vacation home, etc.

Control station. Station licensed to conduct remote control of another amateur radio station.

Auxiliary link station. Station, other than a repeater station, at a specific land location licensed only for the purpose of automatically relaying radio signals from that location to another specific land location.

Repeater station. Station licensed to automatically retransmit the radio signals of other amateur radio stations for the purpose of extending their intra-community radiocommunication range.

(j) *Space radio station.* An amateur radio station located on an object which is beyond, is intended to go beyond, or has been beyond the major portion of the Earth's atmosphere. (Regulations governing this type of station have not yet been adopted and all applications will be considered on an individual basis.)

(k) *Terrestrial location.* Any point within the major portion of the Earth's atmosphere, including aeronautical, land and maritime locations.

(l) *Space location.* (reserved).

(m) *Amateur radio operation.* Amateur radiocommunication conducted by an amateur radio operator from an amateur radio station. May include one or more of the following:

Fixed operation. Radiocommunication conducted from the specific geographical land location shown on the station license.

Portable operation. Radiocommunication conducted from a specific geographical location other than that shown on the station license.

Mobile operation. Radiocommunication conducted while in motion or during halts at unspecified locations.

(n) *Remote control.* Control of transmitting apparatus of an amateur radio station from a position other than one at which the transmitter is located and immediately accessible, except that direct mechanical control, or direct electrical control by wired connections, of an amateur radio transmitter from a point located on board any aircraft, vessel, vehicle, or on the same premises on which the transmitter is located, shall not be considered remote control within the meaning of this definition.

(o) *Control link.* Apparatus for effecting remote control between a control point and a remotely controlled station.

(p) *Control operator.* An amateur radio operator designated by the licensee of an amateur radio station to also be responsible for the emissions from that station.

(q) *Control point.* The operating position of an amateur radio station where the control operator function is performed.

(r) *Antenna structures.* Antenna structures include the radiating system, its supporting structures and any appurtenances mounted thereon.

(s) *Antenna height above average terrain.* The height of the center of radiation of an antenna above an averaged value of the elevation above sea level for the surrounding terrain.

(t) *Transmitter.* Apparatus for converting electrical energy received from a source into radio-frequency electromagnetic energy capable of being radiated.

(u) *Effective radiated power.* The product of the radio frequency power, expressed in watts, delivered to an antenna, and the relative gain of the antenna over that of a half-wave dipole antenna.

(v) *System Network diagram.* A diagram showing each station and its relationship to the other stations in a network of stations, and to the control point(s).

2. In § 97.7, paragraph (c) is amended to read as set forth below and the note at the end of the section is deleted:

§ 97.7 *Privileges of operator licenses.*

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(c) *Technician Class.* All authorized amateur privileges on the frequencies 50.1–54.0 MHz and 145–148 MHz and in the amateur frequency bands above 220 MHz.

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3. Section 97.37 is revised to read as follows:

§ 97.37 *General eligibility for station license.*

An amateur radio station license will be issued only to a licensed amateur radio operator, except that a military recreation station license may also be issued to an individual not licensed as an amateur radio operator (other than an alien or a representative of an alien or of a foreign government), who is in charge of a proposed military recreation station not operated by the United States Government but which is to be located in approved public quarters.

4. Section 97.40 is added to read as follows:

§ 97.40 *Station license required.*

(a) No transmitting station shall be operated in the Amateur Radio Service without being licensed by the Federal Communications Commission.

(b) Every amateur radio operator must have a primary amateur radio station license.

(c) An amateur radio operator may be issued one or more additional station licenses, each for a different land location, except that repeater station, control station, and auxiliary link station licenses may also be issued to an amateur radio operator for land locations where another station license has been issued to the applicant.

(d) Any transmitter to be operated as part of a control link shall be licensed as a control station or as an auxiliary link station and may be combined with a primary, secondary, or club station license at the same location.

(e) A transmitter may only be operated as a repeater station under the authority of a repeater station license.

5. Section 97.41 is amended by modifying paragraph (a), adding new paragraphs (b), (c), (d), (e) and (f), then redesignating former paragraphs (b) and (c) as (g) and (h).

§ 97.41 *Application for station license.*

(a) Each application for a club or military recreation station license in the amateur radio service shall be made on the FCC Form 610–B. Each application for any other amateur radio station license shall be made on the FCC Form 610.

(b) Each application shall state whether the proposed station is a primary or additional station. If the latter, the application shall also state whether the proposed station is a secondary, control, auxiliary link or repeater station.

(c) When an application(s) is made for a station having one or more associated stations, i.e., control station and/or auxiliary link station, a system network diagram shall also be submitted.

(d) Each application to license a remotely controlled amateur radio station, whether by wire or by radio control, shall be accompanied by a statement giving the address for each control point. The application shall include a functional block diagram and a technical explanation sufficient to describe the operation of the control link. Additionally, the following shall be provided:

(1) Description of the measures proposed for protection against access to the remote station by unauthorized persons.

(2) Description of the measures proposed for protection against unauthorized station operation, either through activiation of the control link or otherwise.

(3) Description of the provisions for shutting down the station in case of control link malfunction.

(4) Description of the means to be provided for monitoring the transmitting frequencies.

(5) Photocopies of control station license(s) and auxiliary link station license(s), or the application(s) for same if such stations are proposed for the system network.

(e) Each application to license a control station or an auxiliary link station in the amateur radio service must be accompanied by the following information:

(1) The station transmitting band(s).

(2) Description of the means to be provided for monitoring the transmitting frequencies.

(3) The transmitter power input and justification that such power is in compliance with § 97.67(b).

(4) If remote control of an auxiliary link station is proposed, all of the information required by paragraph (d) of this section shall also be provided.

(f) Each application to license a repeater station in the amateur radio service must include the following information for each frequency band proposed for operation.

(1) Location of the station transmitting antenna, drawn upon a topographic map having the scale of 1:250,000 and a contour interval of 50 feet.[1]

(2) The transmitting antenna height above average terrain.[2]

(3) The effective radiated power in the horizontal plane for the main lobe of the antenna pattern, calculated for maximum transmitter output power.

(4) The transmitter power output with an explanation of the basis for the measurement or computation.

(5) The loss in the transmission line between the transmitter and the antenna expressed in decibels, and method of determination of the loss.

(6) The horizontal and vertical radiation patterns of the transmitting antenna as installed, with reference to True North (for horizontal pattern only), expressed as relative field strength (voltage) or in decibels, drawn upon polar coordinate graph paper, and method of determination of the patterns.

(7) The relative gain of the transmitting antenna in the horizontal plane and method of determination of the gain.

(8) If remote control of the repeater station is proposed, all of the information required by paragraph (d) of the this section also shall be provided.

(9) If auxiliary link station(s) are also proposed, include photocopies of the auxiliary link station license(s), or the application(s) for such licenses.

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6. Section 97.43 is revised to read as follows:

§ 97.43 *Location of Station.*

Every amateur station must have one land location, the address of which is designated on the station license. Every amateur radio station must have at least one control point. If the control point location is not the same as the station location, authority to operate the station by remote control is required.

7. In § 97.47, the note following paragraph (c) is deleted and paragraphs (d) and (e) are added to read as follows:

§ 97.47 *Renewal and/or modification of amateur station license.*

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(d) When an addition to the control point(s) authorized for a remotely controlled station is desired, an application for modification of the remotely controlled station license shall be submitted. Authorized control points may be deleted by letter notification to the Commission.

(e) Should the licensee desire to effect changes to his station which would significantly change the system network diagram or other technical and opera-

[1] Indexes and ordering information are available from U.S. Geological Survey, Washington, D.C. 20242, or Federal Center, Denver, Colorado 80225.

[2] See appendix 5.

tional information on file with the Commission, revised showings for the proposed alterations shall be submitted for approval. An application for modification of the station license is not required.

8. In Section 97.61, the introductory text of paragraph (a) is amended, and new paragraph (c) is added to read as follows:

§ 97.61 *Authorized frequencies and emissions.*

(a) Following are the frequency bands and associated emissions available to amateur radio stations, other than repeater stations, subject to the limitations stated in paragraph (b) of this section, § 97.65, § 97.109 and § 97.110.

* * * * * * *

(c) The following transmitting frequency bands and the associated emission authorized in paragraph (a) of this section are available for repeater stations, including both input (receiving) and output (transmitting):

Frequency Band (MHz)

52.0–54.0
146.0–148.0
222.0–225.0
442.0–450.0

any amateur frequency above 1215 MHz.

The frequency band 29.5–29.7 MHz may be authorized upon a special showing of need for repeater station operation in this band for intra-community amateur radio communications.

9. Section 97.67 is revised by designating the existing text as paragraph (a) and by adding new paragraphs (b) and (c) to read as follows:

§ 97.67 *Maximum authorized power.*

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(b) Notwithstanding the provisions of paragraph (a) of this section, amateur stations shall use the minimum amount of transmitter power necessary to carry out the desired communications.

(c) Within the limitations of paragraphs (a) and (b) of this section, the effective radiated power of a repeater station shall not exceed that specified for the antenna height above average terrain in the following table:

Antenna height above average terrain	Maximum effective radiated power for frequency bands above, in watts—			
	52 MHz	146 MHz	442 MHz	1215 MHz
Below 50 feet	100	800	(1)	
50 to 99 feet	100	400	(1)	
100 to 499 feet	50	400	800	(1)
500 to 999 feet	25	200	800	(1)
Above 1,000 feet	25	100	400	(1)

[1] Paragraphs (a) and (b).

10. In § 97.79, the headnote and text are revised to read as follows:

§ 97.79 *Control operator requirements.*

(a) The licensee of an amateur station shall be responsible for its proper operation.

(b) Every station when in operation shall have a control operator at an authorized control point. The control operator may be the station licensee or another amateur radio operator designated by the licensee. Each control operator shall also be responsible for the proper operation of the station.

(c) An amateur station may only be operated in the manner and to the extent permitted by the operator privileges authorized for the class of license held by the control operator, but may exceed those of the station licensee provided proper station identification procedures are performed.

(d) The licensee of an amateur station may permit any person to participate in amateur radiocommunication from his station, provided that a control operator is present and continuously monitors the radiocommunication to ensure compliance with the rules.

11. In Section 97.87, paragraph (d) is amended and redesignated as (h) and new paragraphs (d), (e), (f), and (g) are added as follows:

§ 97.87 *Station Identification.*

* * * * * * *

(d) Under conditions when the control operator is other than the station licensee, the station identification shall be the assigned call sign for that station. However, when a station is operated within the privileges of the operator's class of license but which exceeds those of the station licensee, station identification shall be made by following the station call sign with the operator's primary station call sign (i.e. WN4XYZ/W4XX).

(e) A repeater station shall be identified by radiotelephony or by radiotelegraphy when in service at intervals not to exceed five minutes at a level of modulation sufficient to be intelligible through the repeated transmission.

(f) A control station must be identified by its assigned station call sign unless its emissions contain the call sign identification of the remotely controlled station.

(g) An auxiliary link station must be identified by its assigned station call sign unless its emissions contain the call sign of its associated station.

(h) The identification required by paragraph (a), (b), (c), (d), (e), (f) and (g) of this section shall be given on each frequency being utilized for transmission and shall be transmitted either by telegraphy using the International Morse Code, or by telephony, using the English language. If by an automatic device only used for identification by telegraphy, the code speed shall not exceed 20 words per minute. The use of a national or internationally recognized standard phonetic alphabet as an aid for correct telephone identification is encouraged.

12. Section 97.89 is amended to read as follows:

§ 97.89 *Points of communications.*

(a) Amateur stations may communicate with:

(1) other amateur stations, excepting those prohibited by Appendix 2.

(2) stations in other services licensed by the Commission and with United States Government stations for civil defense purposes in accordance with Subpart F of this Part, in emergencies and, on a temporary basis, for test purposes.

(3) any station which is authorized by the Commission to communicate with amateur stations.

(b) Amateur stations may be used for transmitting signals, or communications, or energy, to receiving apparatus for the measurement of emissions, temporary observation of transmission phenomena, radio control of remote objects, and similar experimental purposes and for the purposes set forth in § 97.91.

(c) Notwithstanding the provisions of paragraph (a), no more than two repeater stations may operate in tandem, i.e., one repeating the transmissions of the other, excepting emergency operations provided for in § 97.107 or brief periods to conduct emergency preparedness tests.

(d) Control stations and auxiliary link stations may not be used to communicate with any other station than those shown in the system network diagram.

13. Section 97.95 paragraph (a)(1) is amended as follows:

§ 97.95 *Operation away from the authorized permanent station location.*

(a) * * *

(1) When there is no change in the authorized land station location, an amateur radio station other than a military recreation or an auxiliary link station may be operated under its station license anywhere in the United States, its territories or possessions as a portable or mobile operation, subject to § 97.61.

* * * * * * *

14. Section 97.97 is revised to read as follows:

§ 97.97 *Notice of operation away from authorized location.*

Whenever an amateur station is, or is likely to be, in portable operation at a single location for a period exceeding 15 days, the licensee shall give advanced written notice of such operation to the Commission's office specified in § 97.95. A new notice is required whenever there is any change in the particulars of a previous notice or whenever operation away from the authorized station continues for a period in excess of one year. The notice required by this section shall contain the following information:

(a) Name of licensee
(b) Station call sign
(c) Authorized station location shown on station license
(d) Specific geographical location of station when in portable operation
(e) Dates of the beginning and end of the portable operation
(f) Address at which, or through which, the licensee can be readily reached.

15. Section 97.103 is revised to read as follows:

§ 97.103 *Station log requirements.*

An accurate legible account of station operation shall be entered in a log for each amateur radio station. The log shall bear the call sign of the station and the signature of the licensee. The following information shall be recorded as a minimum:

(a) Written enries for all stations which are required only once, or when there is a change thereto.

(1) The signature of the control operator on duty and the call sign of his primary station, if he is other than the station licensee.

(2) The location of the station. Stations in mobile operation may enter the word "local" for amateur radiocommunication conducted within 100 statute miles of the address shown on the station license, otherwise the location of the first and last radiocommunication of each day. Stations in mobile or portable operation shall make an entry showing compliance with § 97.97, if required.

(3) The input power to the transmitter final amplifying stage.

(4) The type of emission used.

(5) The frequency or frequency sub-band used for transmitting:

(b) Other entries for all stations which may be recorded in a form other than written but which can readily be transcribed by the licensee into written form:

(1) The dates of operation.

(2) Except for repeater stations, names of persons other than the control operator using the station, either directly or indirectly, for amateur radiocommunication.

(3) A notation of third party messages sent or received, including names of all participants and a brief description of the message content.

(4) The call sign of each station actually contacted, or other purpose of the transmission, i.e., those set forth in § 97.89. Stations in mobile operation and repeater stations may omit this entry. Control stations shall enter the call sign(s) of each station in the control link. An auxiliary link station shall enter the call sign of its associated station(s).

(5) All stations shall enter the times the station is put into, or taken out of, service. Stations other than those in mobile operation, control stations, auxiliary link stations, and repeater stations shall enter the times of commencing and terminating each exchange of radiocommunication.

16. Section 97.105 is revised as follows:

§ 97.105 *Retention of logs.*

The station log shall be preserved for a period of at least 1 year following the last date of entry and retained in the possession of the licensee. Copies of the log, including the sections required to be transcribed by § 97.103, shall be available to the Commission for inspection.

17. Section 97.111 is redesignated as § 97.112 and a new undesignated center heading and new §§ 97.108 through 97.111 are added to read as follows:

OPERATION OF ADDITIONAL STATIONS

§ 97.108 *Operation of a remotely controlled station.*

(a) An amateur radio station may be operated by remote control only from an authorized control point, and only where there is compliance with the following:

(1) The license for the remotely controlled station must list the authorized remote control point(s). A photocopy of the remotely controlled station license must be posted in a conspicuous place at the authorized control point(s), and at the remotely controlled transmitter location. A copy of the system network diagram on file with the Commission must be retained at each control point. The transmitting antenna, transmission line, or mast, as appropriate, associated with the remotely controlled transmitter must bear a durable tag marked with the station call sign, the name of the station licensee and other information so that the control operator can readily be contacted by Commission personnel.

(2) The control link equipment and the remotely controlled station must be accessible only to persons authorized by the licensee. Protection against both inadvertent and unauthorized deliberate emissions must be provided. In the event unauthorized emissions occur, the station operation must be suspended until such time as adequate protection is incorporated, or there is reasonable assurance that unauthorized emissions will not recur.

(3) A control operator designated by the licensee must be on duty at an authorized control point while the station is being remotely controlled. Immediately prior to, and during the periods the remotely controlled station is in operation, the frequencies used for emission by the remotely controlled transmitter must be continuously monitored by the control operator. The control operator must terminate transmission upon any deviation from the rules.

(4) Provisions must be incorporated to automatically limit transmission to a period of no more than three minutes in the event of malfunction in the control link.

(5) A remotely controlled station may not be operated at any location other than that specified on the license without prior approval of the Commission except in emergencies involving the immediate safety of life or protection of property.

(6) A repeater station may be operated by radio remote control only where the control link utilizies frequencies other than the repeater station receiving frequencies.

§ 97.109 *Operation of a control station.*

(a) Amateur frequency bands above 220 MHz, excepting 435 to 438 MHz, may be used for emissions by a control station. Frequencies below 225 MHz used for control links must be monitored by the control operator immediately prior to, and during, periods of operation.

(b) Where a remotely controlled station has been authorized to be operated from one or more remote control stations, those remote control stations may be operated either mobile or portable.

§ 97.110 *Operation of an auxiliary link station.*

(a) An auxiliary link station may use amateur frequency bands above 220 MHz excepting 435 to 438 MHz for emissions. Frequencies below 225 MHz used by an auxiliary link station shall be monitored by the control operator immediately prior to, and during, periods of operation.

(b) An auxiliary link station may only be used for fixed operation from the location specified on the station license, and only when its associated station(s) is operated from its authorized land location.

§ 97.111 *Operation of a repeater station.*

(a) Emissions from a repeater station shall be discontinued within five seconds after cessation of radiocommunication by the user station. Provisions to automatically limit the access to a repeater station may be incorporated, but are not mandatory.

(b) The transmitting and receiving frequencies utilized by the repeater station shall be continuously monitored by the control operator immediately prior to, and during, periods of operation.

(c) A repeater station may be concurrently operated on more than one frequency band, provided the necessary showings have been approved by the Com-

mission for each frequency band of operation. Crossband operation of repeater stations is prohibited, i.e. both input (receiving) and output (transmitting) frequencies for a particular repeated transmission must be within the same frequency band. Operation on more than one output frequency on a single frequency band is prohibited except when specifically approved by the Commission. Repeater stations authorized to operate in conjunction with one or more auxiliary link stations may utilize an input frequency in a different frequency band provided the input frequency of the auxiliary link station(s) is in the same frequency band as the output frequency of the repeater station.

(d) A repeater station shall be operated in a manner so as to assure that the station is not used for one-way radiocommunication other than provided for in § 97.91.

(e) A station licensed as a repeater station may only be operated as a repeater station, excepting for short periods for testing or for emergencies.

18. In Section 97.193, the introductory text of paragraph (a) is amended, and a new paragraph (e) is added to read as follows:

§ 97.193 *Frequencies available.*

(a) Except as provided in paragraph (e) of this section, the following frequency and frequency bands and associated emissions are available on a non-exclusive basis to the individual class of stations or units of such stations in the Radio Amateur Civil Emergency Service.

* * * * * * *

(e) A repeater station in the Radio Amateur Civil Emergency Service may operate on any frequency, and with any associated emission, above 50 MHz listed in paragraph (a) of this section, except for 220 MHz to 222 MHz.

19. Appendix 2 is amended by adding a footnote to Section 1 as follows:

Sec. 1. Radiocommunications between amateur stations of different countries [1] shall be forbidden if the administration of one of the countries concerned has notified that it objects to such radiocommunications.

* * * * * * *

20. Appendix 5 is added, reading as follows:

APPENDIX 5

DETERMINATION OF ANTENNA HEIGHT ABOVE AVERAGE TERRAIN

The effective height of the transmitting antenna shall be the height of the antenna's center of radiation above "average terrain." For this purpose "effective height" shall be established as follows:

(a) On a United States Geological Survey Map having a scale of 1:250,000, lay out eight evenly spaced radials, extending from the transmitter site to a distance of ten miles and beginning at 0° T (0°, 45°, 90°, 135°, 180°, 225°, 270°, 315° T). If preferred, maps of greater scale may be used.

(b) By reference to the map contour lines, establish the ground elevation above mean sea level (AMSL) at 2, 4, 6, 8, and 10 miles from the antenna structure along each radial. If no elevation figure or contour line exists for any particular point, the nearest contour line elevation shall be employed.

(c) Calculate the arithmetic average of these 40 points of elevation (5 points of each of 8 radials).

(d) The height above average terrain of the antenna is thus the height AMSL of the antenna's center of radiation, minus the height of average terrain as calculated above.

NOTE 1: Where the transmitter is located near a large body of water, certain points of established elevation may fall over water. Where it is expected that service would be provided to land areas beyond the body of water, the points at water level in that direction should be included in the calculation of average elevation. Where it is expected that service would not be provided to land areas beyond the body of water, the points at water level should not be included in the average.

NOTE 2: In instances in which this procedure might provide unreasonable figures due to the unusual nature of the local terrain, applicant may provide additional data at his own discretion, and such data may be considered if deemed significant.

[1] As may appear in public notices issued by the Commission.

F.C.C. 72-785

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Cease and Desist Order To Be Directed Against SERVICE ELECTRIC CABLE TV, INC., TRADING AS TELESERVICE CO. OF WYOMING VALLEY WILKES-BARRE, PA.	Docket No. 18923 File No. SR-4691-N

MEMORANDUM OPINION AND ORDER

(Adopted September 7, 1972; Released September 13, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND H. REX LEE ABSENT.

1. On July 21, 1970, the Commission directed Service Electric Cable TV, Inc. (Service Electric) to show cause why it should not be ordered to cease and desist from violation of former Sections 74.1105 and 74.1107 of the Commission's Rules in the operation of its CATV systems at Hanover Township and Ashley Borough, Pennsylvania. Following a hearing and an Initial Decision, the Commission determined that the carriage of certain distant signals had been commenced on the Hanover Township system on or before February 15, 1966 so that such carriage was grandfathered under the provisions of Section 74.1107(d) of the Rules; but that carriage of Philadelphia stations WPHL-TV, WKBS-TV, and WTAF-TV had commenced after that date [1] without the Commission authorization required by Section 74.1107 and was therefore unlawful. 32 FCC 2d 334, released November 5, 1971.[2] With respect to the Ashley Borough system, the Commission determined that operation thereof had not commenced until after February 15, 1966; that, despite Service Electric's contention to the contrary, Ashley Borough is a separate community from Hanover Township; [3] and that the importation of any distant signals into Ashley Borough is in violation of the Commission's Rules. Service Electric was therefore

[1] Service Electric is presently authorized to carry eleven signals in Hanover Township. At the cease and desist hearing, Service Electric had stipulated that the signals which could be carried by its Hanover system would be controlled by the Commission's decision in a concurrent proceeding to determine the signals which Service Electric could carry in Wilkes-Barre. In that proceeding, the Commission ruled that the three above-mentioned Philadelphia signals carried by the Wilkes-Barre system were not grandfathered and so could not be carried. See *Service Electric Cable TV, et al*, 23 FCC 2d 468; reconsideration denied, 25 FCC 2d 664; reopening denied, 26 FCC 2d 989 (1970); review denied, 30 FCC 2d 831 (1971). Service Electric has appealed this decision to the United States Court of Appeals for the Third Circuit.

[2] Service Electric has appealed this decision to the United States Court of Appeals for the District of Columbia Circuit (Case No. 71-1936). The Court of Appeals on February 11, 1972, denied Service Electric's motion for a stay of the Commission's cease and desist order. The Commission denied a stay on March 3, 1972. 33 FCC 2d 838.

[3] Ashley Borough is an incorporated independent municipality with a population of 5,581 in an area of approximately one square mile. It is surrounded by Hanover Township and is a part of the urbanized area of Wilkes-Barre, Pennsylvania.

ordered to cease and desist from the carriage of the distant signals of Philadelphia stations WPHL–TV, WKBS–TV, and WTAF–TV on its Hanover Township system and from the carriage of any distant signals on its Ashley Borough system.

2. Now before the Commission for consideration are: (1) a Petition to Seek Remand filed on May 4, 1972, by Service Electric and (2) a Petition for Special Relief filed on May 30, 1972, by Service Electric.[4] Each of the petitions seeks essentially the same Commission action; that is, permission for Service Electric to begin immediate carriage in Ashley Borough of the same signals that it is authorized to carry in Hanover Township. Additionally, in its Petition to Seek Remand, Service Electric requests that the Commission seek a remand of Service Electric's appeal in this proceeding now pending before the United States Court of Appeals for the District of Columbia Circuit. As Service Electric notes, however, its remand request is contingent upon and subordinate to its request for permission to carry additional signals and hence if the latter is denied, the former need not be considered. We will therefore first consider Service Electric's request for permission to begin immediate carriage of the additional distant signals.

3. Disposition of the petitions before us must be made in light of the Commission's newly adopted cable television rules which became effective on March 31, 1972. See *Cable Television Report and Order*, FCC 72–108, 37 Fed. Reg. 3252, February 12, 1972, and our reconsideration thereof in FCC 72–530, 37 Fed. Reg. 13848, July 14, 1972. Particularly relevant here are Sections 76.11 and 76.61[5] and the question to be determined is whether a waiver of those Sections is warranted.

4. In the first place we note that CATV service in Ashley Borough was initiated in violation of Section 74.1105 of the Rules and that carriage of distant signals, which Service Electric was forced to discontinue on that system by our cease and desist order and which it now seeks permission to resume, was commenced in violation of Section 74.1107. Hence, no equities to support a waiver accrued to Service Electric by reason of such unlawful operation. Neither does the fact that the residents of Ashley Borough were at one time receiving those signals provide any valid basis for Service Electric's waiver request.

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[4] Other pleadings before the Commission are: (1) an Opposition to Petition to Seek Remand filed on June 5, 1972, by WBRE–TV, Inc., Taft Television Corp., and Scranton Broadcasters, licensees of television stations in the Scranton-Wilkes-Barre area; (2) a Reply to the Opposition filed on June 26, 1972, by Service Electric; (3) separate Oppositions to the Petition for Special Relief, filed on June 29, 1972, by Scranton Broadcasters, Inc. and by WBRE–TV, Inc., (4) comments in Support of Opposition to Petition for Special Relief, filed on July 6, 1972, by Taft Broadcasting Company; (5) a Reply to the Oppositions for Special Relief, filed on July 18, 1972, by Service Electric; (6) Petition for Direction to the Staff, filed on July 31, 1972, by Service Electric; (7) separate Oppositions to Petition for Direction to the Staff, filed on August 9, 1972, by Scranton Broadcasters, Inc., and on August 11, 1972, by WBRE–TV, Inc.; (8) a letter supporting the Oppositions to Petition for Direction to the Staff, filed on August 15, 1972, by Taft Broadcasting Company; and (9) a Reply to Oppositions to Petition for Direction to the Staff filed by Service Electric on August 18, 1972.

[5] In pertinent part, Section 76.11 requires that cable television systems obtain "a certificate of compliance from the Commission" prior to commencing operations or adding signals to existing operations. Section 76.61 specifies the number and type of signals which a CATV system in the largest 50 markets may carry. Although ranked as the 69th market in the proposed rules (22 FCC 2d 603 at 610), the Wilkes-Barre-Scranton, Pa. market is ranked as the 49th television market in the country under the rules as adopted (Sec. 76.51(a)), and Section 76.61 therefore applies. No claim is made that carriage of the additional signals requested is permissible under that Section.

Only if compelling circumstances are shown without regard to the prior carriage of distant signals on the Ashley Borough system may favorable action be taken on Service Electric's petitions.

5. Considering first the provisions of Section 76.11, we believe that Service Electric has made no showing which would justify a grant of a waiver of this Section. The certification procedures adopted in Section 76.11 are an integral part of the Commission's new CATV regulatory policy and a waiver thereof would allow Service Electric to circumvent many of the safeguards of this policy. Thus, such a waiver would free Service Electric from the requirement that it show how it plans to comply with the education, local government, public, and leased access channel requirements of the new rules.[6] A waiver of Section 76.11 would also serve to exempt petitioner from the requirement that it give notice of the filing of an application for a certificate of compliance to the local franchising authority, the superintendent of the schools in the community of the system, and any local or state educational television authorities, and to the public in general.[7] In support of its petition, Service Electric advances the argument that unless a waiver of the section is granted "it will be many months before any authorized signals carried in the surrounding area can be added to the Ashley Borough portion of the system." Any delay in obtaining a certification of compliance as required by Section 76.11 is, however, no more of a burden on Service Electric than it is on any other CATV operator who is subject to the Commission's new rules. The public interest considerations which prompted the adoption of Section 76.11 manifestly outweigh the private interests of Service Electric and petitioner's argument must be rejected as without merit.

6. In further support of its requests for relief, Service Electric argues that Ashley Borough is a "tiny island" surrounded by Wilkes-Barre-Hanover Township, and that it is unfair and discriminatory for Ashley Borough to be forced to receive fewer signals than the surrounding area. It also claims that it is rapidly losing subscribers in Ashley Borough and that the public interest requires that Service Electric be allowed to provide Ashley Borough with the same number of signals which it provides to Hanover Township. We likewise view these arguments to be without merit. The fact that the residents of Ashley Borough are now receiving fewer signals than are the residents of Hanover Township and Wilkes-Barre is essentially irrelevant. Such differences in permissible signal carriage for adjacent communities are inevitable in any new regulatory scheme which seeks to avoid disruption of service already lawfully instituted. Moreover, upon appropriate application, Ashley Borough may be authorized to receive the same

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[6] See Section 76.13(c)(4) and 76.251. These provisions are particularly important since the access channels required by the new CATV rules are designed to insure that "the fundamental goals of a national communications structure be furthered by cable—the opening of new outlets for local expression, the promotion of diversity in television programming, the advancement of educational and instructional television, and increased informational services of local governments." 37 Fed. Reg. 3252, 3269. Service Electric argues, however, that it is unlikely that the small community of Ashley Borough could support the access requirements of Section 76.251. That is a matter, however, which should be submitted for Commission consideration in connection with an application for a certificate of compliance. See *Gerity Broadcasting Company*, FCC 72–651, released July 25, 1972.

[7] See Sections 76.13(d)(3) and 76.15. These sections are designed to afford an opportunity to all interested parties to comment on a CATV system's plan of operation before a certificate of compliance is issued to the system.

number of signals as every other non-grandfathered community in the largest fifty television markets. Hence, there is no unfairness so far as the residents of Ashley Borough are concerned when their situation is compared to the vast majority of residents in such markets. Section 76.61 specifies the signals which may be carried in the 50 major television markets and neither the size nor location of Ashley Borough is sufficient to justify a waiver of the Rules. The population of Ashley Borough is not so small that it can be regarded as of no significance and, furthermore, in our consideration of such waiver applications we must take into account the possible cumulative impact of waivers for all communities of comparable size. No other meritorious public interest considerations have been advanced in support of the requested relief [8] and such relief must be denied.

7. Since we have determined that a grant of Service Electric's request for immediate authorization to resume the carriage of distant signals on the Ashley Borough CATV system would not be in the public interest, no basis exists for seeking a remand from the Court of Appeals for the District of Columbia Circuit of Service Electric's appeal from the Commission's cease and desist order. The petition for such relief will therefore be denied.

8. Accordingly, IT IS ORDERED, That the Petition to Seek Remand, filed by Service Electric Cable TV, Inc. on May 4, 1972, IS DENIED.

9. IT IS FURTHER ORDERED, That the Petition for Special Relief, filed by Service Electric Cable TV, Inc. on May 30, 1972, IS DENIED.

10. IT IS FURTHER ORDERED, That the Petition for Direction to the staff, filed by Service Electric Cable TV, Inc. on July 31, 1972, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[8] Although Service Electric recites the recent floods in the Wilkes-Barre area as a ground for relief, it concedes that its Ashley Borough system was not damaged by the floods. Furthermore, it has provided no adequate factual support for its claim of dire economic need or for the contention that a grant of its petitions would serve to alleviate the situation to any significant degree. In any event, we find the fortuitous circumstance of the floods to be wholly irrelevant to the matter under consideration.

F.C.C. 72-808

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHERN PACIFIC COMMUNICATIONS CO. For Construction Permits in the Domestic Point-to-Point Microwave Radio Service for New Stations at San Francisco, Calif., and Los Angeles, Calif., and 17 Intermediate Locations	File Nos. 4532 thru 4534 – C1 – P – 70, 4538 thru 4550–C1–P–70, 4553–C1–P–70, and 6494 thru 6495–C1–P–70.

MEMORANDUM OPINION AND ORDER

(Adopted September 13, 1972; Released September 15, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID ABSENT

1. The Commission has before it the above captioned applications of Southern Pacific Communications Company, Inc. (SPCC) which were filed February 16. 1970 and April 27, 1970. Petitions to Deny were filed by American Telephone and Telegraph Company and associated companies; Western Union Telegraph Company; General Telephone Company of California and General Telephone Company of the Northwest, Inc. (General); Pacific Telatronics, Inc.; and the California Farm Bureau. Various responsive pleadings were filed by SPCC and the petitioners. Also, Continental Telephone Company of California submitted informal comments.

2. Southern Pacific Communications Company, a wholly owned subsidiary of the Southern Pacific Company,[1] proposes the construction of a point to point microwave system between Seattle, Washington, and San Diego, California, and intermediate locations. However, the Commission is asked to consider only that segment between Los Angeles and San Francisco at the present time since all technical problems have not been resolved with respect to the remainder of the proposal. The service proposed is essentially a private line for the transmission of data, facsimile, telemetering control, voice and other forms of communications. The cost of these facilities is estimated at

[1] The Southern Pacific Company is also the parent of Southern Pacific Transportation Company which operates the railroad.

$2,318,112, including multiplex equipment to provide the following channels:

	Number of 4 KHz channels
San Francisco to Oakland	12
San Francisco to Stockton	24
San Francisco to Merced	12
San Francisco to Fresno	48
San Francisco to Los Angeles	120
Fresno to Los Angeles	48
Bakersfield to Los Angeles	24
Lancaster to Los Angeles	12
Long Beach to Los Angeles	24

3. The petitions to deny filed relate primarily to issues of competition and frequency interference. Commission policy with regard to specialized common carrier facilities such as proposed in these applications was determined in our *First Report and Order* in Docket 18920, released June 3, 1971 (29 FCC 2d 870). Accordingly, the questions concerning the competitive impact between specialized carriers and existing telephone/telegraph carriers and with regard to possible mutually exclusive status are now considered moot. Issues relating to possible frequency interference with authorized facilities also appear to be moot since the applications have been amended to eliminate frequency conflicts. However, several questions raised concerning other matters deserve some discussion.

4. General contends that the Southern Pacific Company must secure Interstate Commerce Commission approval to finance its subsidiary SPCC, as well as state authorization for its Los Angeles-San Francisco segment. In *Southern Pacific Transportation Co.-Merger-Southern Pacific Co.* [Finance Docket 25723, 339 I.C.C. 866 (1969)], the Interstate Commerce Commission held that it did not have jurisdiction over the finances of the Southern Pacific Company under Section 5(2) and 5(3) of the Interstate Commerce Act. In 1969, as part of one corporate reorganization, the Southern Pacific Transportation Company was merged with the former Southern Pacific Company, and both were acquired by a holding Company, the Southern Pacific Company, Inc., which then amended its charter to change its corporate name to that of the former Southern Pacific Company. Thus the current Southern Pacific Company is now a holding company, and neither it nor SPCC is subject to Sections 20a and 20b of the Interstate Commerce Act which requires prior ICC approval of carrier financing.

5. With respect to the need for state authorization, SPCC has submitted a staff letter from the Public Utilities Commission of California which states that application for a state certificate is not required for construction of the Los Angeles-San Francisco segment of the proposed Seattle-San Diego system, and that intrastate service may be commenced upon the filing of a tariff with that Commission. We conclude, therefore, that neither of these questions raised by General poses any problem.

6. After SPCC's most recent amendments, Western Union filed a further Petition to Deny alleging the existence of two unresolved cases

of potential interference with "planned" *growth* frequencies. These conflicts are:

(1) SPCC's Holiday Hill transmitter (File No. 6494–C1–P–70) towards Los Angeles, interfering with WU's Los Angeles station KNJ70 receiving from Sierra Peak, and

(2) SPCC's Los Angeles transmitter (File No. 6495–C1–P–70) towards Holiday Hill, interfering with WU's Sierra Peak station KNJ72 receiving from Los Angeles.

7. Of the 8 channels (each direction) in the 6 GHz frequency band between Los Angeles and Sierra Peak, Western Union is currently authorized to use two: one working and one protection channel in each direction. Western Union apparently claims it must have the entire frequency block to meet the increasing traffic requirements of the Los Angeles area and to service its proposed Lakeview (Riverside), California domestic satellite earth station. To substantiate its need, Western Union offers only the bare recitation in its petition that these two cases involve "needed and vital Western Union growth frequencies" which are "of paramount importance to Western Union in that they are needed in conjunction with Western Union's proposed domestic satellite earth station to be located in the Los Angeles area as well as to handle the rapidly increasing traffic requirements in that area". SPCC contends that: (a) since the Los Angeles area is highly congested and frequency coordination is difficult, it is unable to change its polarization (as suggested by Western Union) or make other technical adjustments to clear the entire frequency block since cross polarization would interfere with the existing routes of other carriers, in particular those of AT&T Long Lines; and (b) rerouting would cause substantial additional costs since it could no longer use existing Southern Pacific Railroad buildings and towers.

8. In our *First Report and Order*, *supra*, we adopted rules (i.e. § 21.100(d)) which require prior frequency coordination with a stated objective of making the most effective and efficient use of the radio spectrum and avoiding the blockage of growth of systems likely to need additional capacity in the foreseeable future. To protect the future expansion of existing routes we stated that:

> . . . our policy is to protect the future expansion of existing growth routes to the extent practicable. By this we mean that when a new route is designed, consideration should be given to adjacent routes that may have significant expansion requirements. If the new route can be reasonably adjusted to avoid or minimize impact on an established growth route, we will expect the adjustment to be made.[2]

But we made it clear that we did not intend to allow the device of prior coordination to be used to give one carrier a veto power over another's technical proposal.

9. In attempting to resolve a contested case of route blockage, there are two related factors that must be considered, the need for growth of the existing system as compared to the degree of difficulty by the newcomer in making the adjustments necessary to accommodate such growth. On one hand, Western Union has not presented any evidence

[2] 29 FCC 2d at 931.

109–009—72——7

to substantiate its allegations that the remaining channels are "needed and vital." Its reference to the possible need to interconnect a proposed earth station does nothing to support its future requirement for 6 GHz frequencies inasmuch as such facilities are proposed to operate in the 11 GHz band.[3] Since 1961 when its stations KNJ70 and KNJ72 were built, Western Union has utilized only one working channel, which is hardly reflective of rapid growth. Nor have any growth projections supported by any data been submitted to show that the route is likely to undergo a metamorphosis. By comparison, SPCC has stated the difficulties it could encounter in attempting to fully protect the growth of Western Union's route.

10. Therefore, we conclude that Western Union has not made a case for protecting the remaining channels on its route. Even if SPCC's route would reduce the ultimate capacity of Western Union's route by one channel,[4] there appears to be more than ample remaining capacity to meet any reasonable future needs Western Union may have.

11. In view of the foregoing, we find that the instant proposed facilities would serve the public interest, convenience and necessity and that SPCC is technically, financially, and otherwise qualified to construct and operate them.

12. Accordingly, IT IS HEREBY ORDERED, that the captioned applications ARE GRANTED and SPCC IS AUTHORIZED to install and operate the various channel quantities (or equivalent thereof) as specified in paragraph two above.

13. IT IS FURTHER ORDERED, that the aforementioned petitions to deny are DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[3] See Western Union Application File Nos. 664/668–C1–P–71, 37 FCC 2d.
[4] Due to the fact that the two paths in question are separated by an angle of 54°, there is some doubt that harmful co-channel interference would necessarily occur between the two routes.

F.C.C. 72–769

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of SUBURBAN BROADCASTING CORP., HUNTINGTON, N.Y. For Modification of Construction Permit and Waiver of Section 76.501 of Commission Rules	File No. BMPCT–7159

AUGUST 29, 1972.

SUBURBAN BROADCASTING CORP.,
c/o Mr. DAVID H. POLINGER,
63 Windmill Drive,
Huntington, NY 11743

GENTLEMEN: This refers to your application (BMPCT–7159) for modification of construction permit to make changes in the authorized facilities of commercial television broadcast station WSNL–TV, channel 67, Patchogue, New York, and your request for temporary waiver of section 76.501 of the Commission's rules.

Your proposed operation would result in station WSNL–TV placing a predicted Grade B contour over a cable television system located in Manhattan, New York, which system is owned by Comtel and controlled by Holmes Protective Service. Since there are common officers, directors and stockholders of Suburban Broadcasting Corporation and Holmes Protective Service, you have requested a temporary waiver of section 76.501 of the rules until August 10, 1973. In support of your request, you state that grant of your application will help provide the first local television outlet for Patchogue, which will contribute to diversification of media and the Commission's policy of fostering UHF development; that the station's authorized nondirectional antenna is ineffective, in that a substantial portion of the station's service would be wasted over water; and that the use of the proposed directional antenna would place the station's Grade B contour over Manhattan and thus enable the station to provide service to the maximum number of people. In addition, you indicate that Comtel's CATV system is not large since it only provides service to 14,000 hotel rooms in some 24 hotels and approximately 1,300 regular subscribers and that the officers and directors of Suburban who have cross interest in the CATV system will make every effort to dispose of their conflicting interests by August 10, 1973.

In view of the foregoing, we find that good cause has been shown for waiver of section 76.501 of the rules and that a grant of station WSNL–TV's modification application would serve the public interest, convenience and necessity. We emphasize (1) that absent modification of

section 76.501 upon reconsideration, Messrs. Robert A. Rosen, David H. Polinger and J. P. Catuzzi will be required to divest themselves of their interests in station WSNL–TV or of their interests in Holmes Protective Service by August 10, 1973, and (2) inasmuch as the cross interest came into existence after the adoption of section 76.501 of the rules, no tax certificate will be issued by the Commission for such divestiture.

Commissioner Johnson dissented. Commissioners H. Rex Lee and Reid were absent. Commissioner Hooks did not participate.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 72-821

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.606(b), TABLE OF ASSIGNMENTS, TELEVISION BROADCAST STATIONS. (VALLEJO-FAIRFIELD AND SACRAMENTO, CALIF.)	Docket No. 19511 RM-1839 RM-1948

FIRST REPORT AND ORDER

(Adopted September 13, 1972; Released September 19, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID ABSENT.

1. This proceeding begun by Notice of Proposed Rule Making issued May 22, 1972 (FCC 72-428) proposed in part, the switching of UHF Channel 31 from Stockton to Sacramento, California, and dropping in UHF Channel 64 into Stockton, California. The Sacramento petitioner (Grayson Television Company, Inc.) currently has a construction permit to operate on UHF Channel 15 at Sacramento (Station KMUV(TV)), but because the present specified transmitter site is unsatisfactory, a new site is required. Thus, a television operation is not permitted under the Rules because such operation at the newly specified site will result in an increase in the operating limits on the use of the channels allocated to the land mobile services in the San Francisco-Oakland area by the so-called "Land Mobile" decision. See *First Report and Order, Docket No. 18261*, 23 FCC 2d 325 (1970). In the Notice, the Commission did not propose deletion of Channel 15 at Sacramento, but rather proposed prohibiting use at Sacramento for television purposes until further action by the Commission.

2. Camellia City Telecasters, Inc., licensee of Station KTXL(TV), Channel 40, Sacramento, California, in its initial comments, requested that Channel 15 be assigned to Merced, California for a possible satellite operation together with a switch of other UHF channels at Fresno and San Luis Obispo, California, so that Channel 15 can be assigned in Merced. Camellia City did not object to the switch of Channel 31 from Stockton to Sacramento and the dropping in of Channel 64 at Stockton. Grayson, the petitioner in comments filed one day late (for which waiver of late filing is requested) incorporates its petition by reference, and reiterates and reaffirms the contentions and requests set forth therein. No other initial comments were filed, but reply comments were filed by the petitioner and by Capital Cities Broadcasting Corporation, licensee of Station KFSN-TV, Fresno, California, Pappas Television Incorporated, permittee of UHF Station KMPH, Tulare, California, Retlaw Enterprises, Inc., licensee of

UHF Station KJEO, Fresno, California and McClatchy Newspapers, licensee of Station KMJ–TV, Fresno, California. The only comments and reply comments dealing with the Sacramento-Stockton proposed shift were by the petitioner. All the other reply comments dealt with the proposed Merced-Fresno-San Luis Obispo realignment. The petitioner objected strenuously to all motions for extensions of time and repeatedly requested action on the proposed switch of Channel 31 from Stockton to Sacramento and the related assignment of Channel 64 at Stockton.

3. We shall not act on Camellia's counterproposal or the Vallejo-Fairfield proposal (the other proposal set forth in the Notice) at this time, but will only consider the shifting of Channel 31 from Stockton and the dropping in of Channel 64 at Stockton. The use of Channel 31 at Sacramento and Channel 64 at Stockton is in compliance with the Commission's minimum spacing requirements and all the other applicable technical rules. The assignment of Channel 31 to Sacramento will allow the permittee to construct a new UHF station on that channel on an outstanding construction permit held by petitioner since Channel 15 cannot be utilized for the reasons set forth in paragraph 1. Channel 64 at Stockton will replace an existing assignment to that city. We find these assignments of the channels to be in the public interest and they are adopted. We also find that the one day delay in the filing of the initial comments by Grayson to be inadvertent and did not result in any delay of the proceeding. The waiver of filing date will be granted and Grayson's comments will be accepted.

4. In view of the foregoing, IT IS ORDERED, That, effective October 31, 1972, pursuant to authority contained in Sections 4(i), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, Section 73.606(b) of the Commission's Rules, the Television Table of Assignments, IS AMENDED to read as follows:

City:	*Channel No.*
Sacramento, Calif.	3, *6, 10, 15,[1] 31, 40
Stockton, Calif.	13+, 58, 64

[1] Channel 15 will not be available for television use until further action by the Commission.

5. IT IS FURTHER ORDERED, That the request of Grayson Television Company, Inc. for waiver of the filing date set forth in the Notice of Proposed Rule Making IS GRANTED and the comments filed by Grayson Television Company, Inc. ARE ACCEPTED.

6. IT IS FURTHER ORDERED, That, the outstanding construction permit of Grayson Television Company, Inc. for the construction of Station KMUV(TV) on Channel 15 at Sacramento, California, IS HEREBY MODIFIED to specify operation on Channel 31 in lieu of Channel 15, on the condition that permittee shall submit to the Commission all necessary information to comply with the applicable technical rules for modification of authorization to cover the construction of Station KMUV(TV) on Channel 31 at Sacramento, California.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-795

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
COMPARABLE TELEVISION TUNING REGULATION } Docket No. 19268

MEMORANDUM OPINION AND ORDER

(Adopted September 7, 1972; Released September 13, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND H. REX LEE ABSENT.

1. A Report and Order in this proceeding was adopted on November 24, 1971 (F.C.C. 71-1177, 32 F.C.C. 2d 612, 36 F.R. 23563, December 10, 1971). A petition for reconsideration was filed by the Philco-Ford Corporation on December 29, 1971. Statements supporting the petition for reconsideration were filed by Motorola, Inc., GTE Sylvania, and the Consumer Electronics Group, Electronic Industries Association (EIA).

2. The Philco petition expresses concern about two of the requirements set out in Section 15.68(d)(2):

> **The requirement that *monochrome* receivers equipped with a 70-position UHF detent mechanism be equipped with AFC. (Philco does not object to this requirement as applied to color receivers.)**
>
> **The requirement that the channel selection mechanism be capable of positioning the tuner within the pull-in range of AFC.**

These requirements would go into effect on July 1, 1974. They are discussed separately below:

3. *The monochrome-AFC requirement.* Philco asks that this requirement be deleted, arguing that the requirement would disserve the interests of the television receiver purchaser and that it would seriously disrupt the engineering and marketing plans of television receiver manufacturers. The company considers that present monochrome tuning methods (without AFC) are engineeringly sound and have won public acceptance and, in effect, that the public does not need monochrome AFC and would not find that its value warranted the additional receiver cost. It argues that low cost is what makes monochrome receivers attractive to the public, particularly in the case of lower income families, second and third set purchases, and the smaller screen size receivers. It maintains that an increase in the cost of monochrome receivers would adversely affect total receiver sales. It argues, further, that the reduction in the cost differential between monochrome and color receivers would, in particular, reduce the sale of monochrome receivers and would have an especially severe impact on the sale of the smaller, less expensive monochrome receiver

models. Philco stresses that the monochrome-AFC requirement was unexpected and that planning with regard to model mix, production quantities, and engineering design has gone forward on the assumption that AFC would be required only for color receivers. In short, Philco's position is that a costly reconsideration of design and model mix decisions should not be imposed on the industry at a late date in terms of industry planning schedules, particularly where, in the judgment of the industry, the resulting product will be less satisfactory to the consuming public. EIA takes essentially the same position, without, however, accepting the proposition that AFC should be required for color receivers.

4. Sylvania supports the position taken by Philco and urges in addition that AFC not be required in color receivers. It argues that comparable tuning can be accomplished without AFC, provided a non-memory VHF tuner is utilized in combination with a UHF tuner geared for slow fine tuning (at least 20 degrees rotation per megahertz). It urges that slow fine tuning be authorized as an alternative to AFC in color receivers.

5. Motorola also urges that AFC not be required for monochrome receivers. Its principal point is that equipping a receiver with AFC is not simply a matter of adding AFC circuitry. It states that circuitry would be needed to trap the color subcarrier and that additional sound trapping and audio gain and a separate sound detector would be required. This would not only increase the cost of the monochrome receiver but would also, in Motorola's judgment, require complete redesign of the IF system. Motorola believes that the costs and problems associated with redesign would cause the industry to abandon use of the 70-position channel selection mechanism in monochrome receivers. In addition, Motorola shares Sylvania's view that comparable tuning can be achieved by combining a 70-position mechanism (without AFC) with a non-memory VHF tuner. It notes further that if the accuracy of the 70-position tuning system is improved to provide for detented channel selection within the pull-in range of AFC, that it will be comparable in accuracy to the VHF memory system for which AFC is not required.

6. *The requirement that the channel selection mechanism be capable of positioning the tuner within the pull-in range of AFC.* Philco asks simply that we reconsider the technical feasibility of the requirement that the 70-position channel selection mechanism be capable of positioning the tuner within the pull-in range of AFC circuitry with which the receiver is equipped. Sylvania suggests that the requirement apply only when a color receiver is voluntarily equipped with AFC by the manufacturer. Motorola recommends that we require full comparability in the accuracy of the VHF and UHF channel selection mechanism used on a given receiver by 1974 but that we not specify the accuracy for either of these tuning mechanisms or particular methods (e.g., AFC) for achieving that objective. EIA takes a stronger position, to the effect that the requirement is not feasible in terms of the 1974 date. It notes that receivers to be produced in 1974 are now being designed; that receivers must be designed around equipment

which is known and whose availability is assured; and that the receiver manufacturer's only option (if the requirement is retained) would be to drop plans for use of a 70-position system in 1974 models. It recommends that the 1974 effective date for the stricter standard be deferred indefinitely, pending proof that a system meeting that requirement is technically feasible and can be made available and pending the additional period required for design of that system into receivers. It recommends generally, in addition, that any requirement be stated in terms of performance objectives (e.g., fully comparable accuracy) rather than means (e.g., AFC) for accomplishing such objectives.

7. *Discussion.* The Commission is concerned with the achievement of equal tuning accuracy for UHF and VHF channels on all receivers. We would consider that this standard had been met if the need for fine tuning UHF and VHF channels were eliminated. The standard would also be met, assuming fine tuning to be necessary, if the UHF and VHF channel selection controls (whether or not electronically aided) positioned the tuner with equal accuracy, as measured by maximum deviation from correct frequency in kilohertz, and if UHF and VHF fine tuning speed were the same. Equal tuning accuracy is a matter of concern regardless of the type of receiver (i.e., monochrome or color) and regardless of the tuning mechanism which is employed. We are not concerned with the means by which equal tuning accuracy is achieved. In the case of a 70-position non-memory UHF tuning system, however, the only presently known method for achieving equal tuning accuracy is to equip the receiver with automatic frequency control (AFC) circuitry combined with a channel selection mechanism capable of positioning the tuner within the pull-in range of AFC. This being the case, we are retaining these requirements. To lessen the problem of transition to receivers-so-equipped, however, we are deferring the effective date of the requirement from July 1, 1974 to July 1, 1975.

8. Though capability now differs among tuner manufacturers, all are making progress toward improved accuracy for the 70-position non-memory system, and information recently received indicates that fully comparable tuning accuracy for receivers utilizing such a system is a reasonable expectation for the near future. See letter of June 27, 1972 from the General Instrument Corporation, which has been entered in the Docket file. Although AFC is recognized by industry as a highly desirable feature in color TV receivers and most color receivers in production are now AFC-equipped, those commenting in this proceeding do not recognize AFC as desirable in monochrome receivers. We would naturally look with favor upon any alternative method of achieving equal tuning accuracy which may be developed and is more acceptable to industry than the use of AFC. However, in the absence of such developments, we view the present requirement of AFC in monochrome receivers utilizing a 70-position non-memory UHF tuning system as appropriate and desirable.

9. As an aid to the Commission in monitoring the progress toward fully comparable accuracy, we are requiring that each application for certification of a television receiver that uses a 70-position UHF detent

109-009—72——8

tuner to achieve compatibility of tuning be accompanied by a report of measurements of the tuning accuracy achieved. Measurements should be made pursuant to the procedure set out in our Bulletin OCE 30, entitled "Procedure for Measurement of the UHF Tuning Accuracy of a Television Receiver Incorporating a 70-position Non-Memory UHF Detent Tuning System." In this connection, an objection has been raised to our requirement that the measurements be made with the fine tuning control free to move during the test. This requirement is deliberate and is intended to reproduce the actual conditions under which the user will operate his receiver. We must therefore, overrule this objection and insist that tuning accuracy measurements be made with the fine tuning control not locked in place. The requirement of measurement data is new. We consider, however, that it is important to settle on the rules of the game in this area at an early date and that notice and opportunity for comment on this matter would serve little or no purpose. We conclude, therefore, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public procedure, and the attendant delay, would be contrary to the public interest.

10. Authority for the amendment set out in the attached Appendix is contained in Sections 4(i), 303(r) and (s), and 330 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and (s), and 330.

11. Accordingly, IT IS ORDERED, effective October 27, 1972, That § 15.68 and § 15.69 of the Rules and Regulations are amended as set out in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 15.68(d) is revised to read as follows:

§ 15.68 *All-channel television broadcast reception: receivers manufactured on or after July 1, 1971.*

* * * * * * *

(d) *Use of a 70-position non-memory UHF detent tuning system.*

(1) Numerical readout shall be provided for each of the 70 UHF channels or, if all of the VHF and UHF channel numbers displayed are at all times visible on the face of the receiver, numerical readout shall be provided for at least every other UHF channel, with marks to indicate those channels not displayed numerically.

(2) Until July 1, 1975, a 70-position, non-memory UHF detent tuning system may be used to meet the requirements of this section provided the channel selection mechanism shall be capable of positioning the tuner to receive each UHF channel at its designated detent position, with maximum deviation from correct frequency on any detent setting not exceeding ±3 MHz, when approached from either direction of rotation.

(3) On or after July 1, 1975, a 70-position non-memory UHF detent tuning system may be used to meet the requirements of this section provided:

(i) The receiver shall be equipped with automatic frequency control (AFC) circuitry.

(ii) The channel selection mechanism shall be capable of positioning the tuner to receive each UHF channel at its designated detent position with maximum deviation from correct frequency on any detent setting less than the pull-in range of automatic frequency control (AFC) circuitry with which the receiver is equipped, when approached from either direction of rotation.

2. Section 15.69(e)(11) is added, to read as follows:

§ *15.69 Certification of receivers.*

* * * * * * * *

(e) * * *

(11) In the case of a television broadcast receiver designed to meet the requirements of § 15.68 by the use of a 70-position UHF detent tuner, a report of measurements showing the tuning accuracy achieved. Measurements shall be made in accordance with the procedure set out in Bulletin OCE 30.

F.C.C. 72-823

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF WAGENVOORD BROADCASTING CO., LICENSEE OF STATION WVOG, NEW ORLEANS, LA.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted September 13, 1972; Released September 15, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID ABSENT.

1. In *Wagenvoord Broadcasting Company*, 35 FCC 2d 361, 24 RR 2d 626 (1972), we denied the application of Wagenvoord Broadcasting Company (Wagenvoord), licensee of Station WVOG, New Orleans, Louisiana, for mitigation or remission of a forfeiture of $10,000. Now under consideration is a petition filed June 20, 1972, by Wagenvoord, seeking reconsideration of that action to the extent of requesting a delay in the payment of the forfeiture.

2. We have considered Wagenvoord's financial position at each stage of this proceeding. We noted in our previous decision, cited above, that in addition to the usual financial information on hand for Station WVOG, we had also been apprised of a default judgment of $16,800 in Wagenvoord's favor. The judgment was awarded for damages incurred because of the negligence of a former consulting engineer. Of the total amount awarded, $10,000 was for the forfeiture that had been assessed by us. The judgment, we stated, "apparently has provided or will provide funds to pay the forfeiture, 35 FCC 2d at 362. In its petition, Wagenvoord states that as of June 12, 1972, it had not collected the judgment, and that because of its financial plight it cannot pay. However, no data has been submitted in the petition to support this conclusion. The information we have does not support Wagenvoord's position. The 1971 federal tax return submitted to us by Wagenvoord shows that the corporation sharply curtailed its operating losses in comparison to 1970. In fact, a substantial cash flow is shown. In a letter submitted in support of the assignment application, Fred Westenberger who is in charge of the station and who is an officer of the licensee, states that under his direction 12 creditors have been paid in full and that others are receiving agreed upon monthly payments. Over $60,000 has already been paid out to retire debts, according to Westenberger. This further attests to Wagenvoord's improved financial position. We therefore conclude that Wagenvoord has not

shown that its financial position is such that payment of the forfeiture cannot now be made.

3. On June 6, 1972, an application (BAL–7616) was filed in which it is proposed to assign the license for Station WVOG from Wagenvoord to F. W. Robbert Broadcasting Company, Inc. Wagenvoord states in its petition, "As delineated in the supporting statement to the application and the financial exhibits thereto, provisions have been made at Closing to satisfy the $10,000 forfeiture. . . ." Wagenvoord asserts that in view of the "absolute insurance" that the forfeiture will be paid upon Commission approval of the assignment application, the delay in payment is appropriate.

4. The undertakings set out in the assignment application and related materials do not, in our view, provide more assurance that the forfeiture will be paid than we now have. However, we need not rest our decision on that point since we have a more basic problem with Wagenvoord's rationale for delay in the payment of the forfeiture. The time that it takes to process an assignment application can vary considerably, depending largely on the diligence of the applicants. Not only does the time vary, but the parties could conceivably request that the application be dismissed. This has already occurred in connection with another assignment application filed by Wagenvoord for Station WVOG. Therefore, if we granted Wagenvoord's request, the timing or occurrence of the payment of the forfeiture would be governed by events over which Wagenvoord exercises considerable control. As a matter of policy, we do not believe that the payment of forfeitures should be within the control of licensees.

5. Accordingly, IT IS ORDERED, That the petition for reconsideration filed June 6, 1972, by Wagenvoord Broadcasting Company, requesting a delay in the payment of its $10,000 forfeiture, IS DENIED.

6. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Wagenvoord Broadcasting Company, licensee of Station WVOG, New Orleans, Louisiana.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72–826

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST FOR TEMPORARY WAIVER OF SECTION 76.501 OF THE COMMISSION'S RULES BY WARNER COMMUNICATIONS INC., AND CYPRESS COMMUNICATIONS CORP.
With Respect to Cable Television Systems Serving Palm Springs, Bakersfield, and Environs, Shafter, Oildale, Wasco, McFarland, Delano, Taft, Taft Heights, South Taft, Ford City, and Victorville, Calif.; DeKalb and Sycamore, Ill.; Warsaw, Winona Lake, and Kosciusko County, Ind.; and Altoona and Lebanon, Pa.

MEMORANDUM OPINION AND ORDER

(Adopted September 13, 1972; Released September 19, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, REID, AND WILEY ABSENT; COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONERS H. REX LEE AND HOOKS CONCURRING IN THE RESULT.

1. The Commission has before it for consideration: (i) a "Joint Petition for Waiver of Section 76.501(a) of the Commission's Rules" [1] filed July 25, 1972, by Warner Communications Inc. (WCI) and Cypress Communications Corporation (Cypress) with respect to cable television systems serving Palm Springs, Bakersfield, Oildale, Shafter, Wasco, McFarland, and Delano, Taft, Taft Heights, South Taft, Ford City, and Victorville, California; DeKalb and Sycamore, Illinois; Warsaw, Winona Lake, and Kosciusko County, Indiana; and Altoona and Lebanon, Pennsylvania; [2] (ii) a "Supplement to Joint Petition for Waiver of Section 76.501(a)" thereto, filed August 25,

[1] Section 76.501 of the Rules provides, in pertinent part, that:
(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: . . . (2) A television broadcast station whose predicted Grade B contour . . . overlaps in whole or in part the service area of such system; or (3) A television translator station licensed to the community of such system . . . (b) The provisions of paragraph (a) of this section are not effective until August 10, 1973, as to ownership interests proscribed herein if such interests were in existence on or before July 1, 1970 . . .: Provided, however, That the provisions of paragraph (a) of this section are effective on August 10, 1970, as to such interests acquired after July 1, 1970.

[2] Subsequent events have mooted that portion of the waiver request which deals with Altoona and Lebanon, Pennsylvania.

1972; and (iii) a "Further Supplement to Joint Petition for Waiver of Section 76.501(a)" filed September 1, 1972.

2. The joint petition was submitted in connection with a merger agreement which contemplates that Warner CATV Services, Inc., a wholly owned subsidiary of WCI, will be merged into Cypress, and that WCI will then acquire all issued and outstanding voting stock of Cypress. WCI, through subsidiaries, owns and operates 78 cable television system operations which serve approximately 190,000 subscribers in 23 states.[3] In addition, WCI has connections with various broadcast stations so that consummation of the proposed merger must result in violation of Section 76.501 of the Rules.[4] Cypress, directly or through subsidiaries, owns and operates 51 cable system operations which serve approximately 180,000 subscribers in 17 states.[5] Upon consummation of the agreement, WCI will be one of the larger system operators, but with substantially fewer than the approximately 639,300 subscribers served by TelePrompTer Corporation which has been the largest multiple system operator since the Commission approved its merger with H&B American, *TelePrompTer Transmission of Kansas, Inc.*, 25 FCC 2d 469 (1970).[6]

3. Petitioners propose to consummate the merger late in September, 1972, in order to avoid risks for their stockholders, and possible deterioration of service to their subscribers, which might result from the uncertainties always attendant upon a merger. At the same time, petitioners hope to avoid losses which could result from distress sales of some systems which would be necessitated to achieve immediate compliance with Section 76.501 of the Rules. Accordingly, petitioners request waivers of Section 76.501 of the Rules which will permit them to execute their agreement, but will extend until August 10, 1973, or, alternatively, 90 days after final Commission action on the pending petitions for reconsideration of Section 76.501 of the Rules, the time in which they must complete divestiture. Petitioners state that steps have already been taken toward separation of some of the interests, and that they intend to make all efforts to complete an effective divorce of these common interests within the grace period finally determined by the Commission. Further, they represent that no subsequent request for waiver beyond the grace period as finally determined will be predicated upon grant of the instant petition.

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[3] As reflected in its Annual Report for 1971, WCI is an enterprise with diversified interests, largely in the communications field.

[4] Petitioners seek waivers with respect to the following cross-relationships: (1) a Cypress-controlled cable system at Palm Springs with Cypress-controlled Television Broadcast Translator Stations K70AL, K77AV, K73AD, licensed to Desert Hot Springs and Palm Springs, California; (2) Cypress-controlled cable systems at Bakersfield and environs, Shafter, Wasco, Oildale, McFarland, and Delano, with Station KBAK–TV, Bakersfield, a station in which Cypress principals have interests; (3) WCI-controlled cable systems at Taft, Ford City, South Taft, Taft Heights, and Victorville, California, with KBAK–TV; (4) WCI-controlled cable systems at DeKalb and Sycamore, Illinois, with Station WSNS–TV, Chicago, a station in which Cypress principals have interests; and (5) Cypress-controlled cable systems at Warsaw, Winona Lake, and Kosciusko County, Indiana, with Station WKJG–TV, Fort Wayne, Indiana, a station in which WCI principals have interests.

[5] Cypress, a smaller company than WCI, is engaged principally in the cable television business although it is also engaged in the common carrier microwave relay and television translator business.

[6] In the *Notice of Proposed Rule Making and of Inquiry in Docket No. 18891*, 23 FCC 2d 833 (1970), we requested comments on a proposal that each cable operator be limited to a total of 2,000,000 subscribers (plus an additional 200,000 under given circumstances). WCI's approximately 370,000 subscribers would equal about 18.5 percent of the suggested limit.

4. In support of the requested waiver, the petitioners argue generally that:

(a) The affiliations prohibited by Section 76.501(a) which give rise to their joint petition are merely incidental byproducts of a merger which is in all other respects in conformity with the Commission's rules. Of the 129 WCI and Cypress cable system operations, only the few instances described in the following paragraphs involve any Section 76.501 questions. Thus, taken as a whole, the Cypress-WCI merger will not have a significant effect on the purposes of Section 76.501.

(b) The public interest will be served by prompt consummation of the Cypress-WCI agreement since it will generate substantial additional financial resources which will further the development of Cypress cable television systems for the benefit of the public and will avoid such deterioration of the quality of service provided to Cypress' cable subscribers as might result from uncertainties accompanying extended delay.

(c) The waivers sought are of quite limited duration.

(d) The cross interests involved do not result in even the temporary creation of a significant concentration of local media control or diminution of program diversity. Indeed, in two instances (Palm Springs and the five Kerns County communities) the cross-interests, involving Cypress subsidiaries and Cypress principals, existed prior to July 1, 1970, and waiver is sought only to the extent necessary to permit these pre-existing common interests to continue until the expiration of the grace period finally specified by the very terms of the rule.

(e) In every instance, the common interests at issue herein arise from the overlap of UHF television facilities and cable television systems, and the applicability of the rule to these cases may be affected by Commission action on reconsideration.

(f) The grace period provided in Section 76.501 of the Rules, and the rationale of previous waivers of that section leave no doubt that good cause for waiver exists when the cross-interests do not present a significant incursion on the policy underlying the rule, and rigid application of the rule would result in the imposition of undue hardships. In this case—in which denial of the petitioners' request for a temporary waiver would necessitate either delay in consummation of the merger agreement, with attendant financial risk to Cypress stockholders, or losses resulting from quick, distress sale of facilities referred to herein—an appropriate balancing of the minimal effect of the waivers upon the purposes of Section 76.501 of the Rules against the hardships which would be imposed by denial of the requested waivers makes it plain that good cause for grant of the petition exists.

5. Having reviewed the general background of the waiver request, we will now consider the specific situations to which the waiver will apply. With regard to the cable systems serving Palm Springs, Bakersfield, Oildale, Shafter, Wasco, McFarland, and Delano, the petitioners assert that (as noted above) the cross-relationships in question came into existence prior to July 1, 1970, and that the degree of cross-interest will actually diminish as a result of the merger. Specifically, petitioners state that:

(a) H&B Translator Corporation, a wholly owned subsidiary of Cypress, is the licensee of UHF television broadcast translator stations serving Desert Hot Springs and Palm Springs, California. Another subsidiary of Cypress owns and operates the cable television system at Palm Springs.

(b) HarriScope Broadcasting Corporation is the licensee of Station KBAK-TV, Bakersfield, California, whose predicted Grade B contour includes cable I. Harris, and Jerry B. Greene are (1) stockholders,[7] and, respectively, chairman systems, owned and operated by a Cypress subsidiary, which serve Bakersfield, Oildale, Shafter, Wasco, McFarland, and Delano. Messrs. Irving B. Harris, Burt of the board, president and board member, and vice president-finance of Cypress,

[7] Their stock interests in Cypress are stated as: I. B. Harris, 15.2%; B. I. Harris, less than 4%, J. B. Greene, less than 1%.

and (2) stockholders[8] and, respectively, board member, president and board member, and treasurer of HarriScope Broadcasting.

(c) Harris, Harris, and Greene, together with certain of their associates, have de facto control of Cypress, owning an aggregate of approximately 44.5% of the outstanding shares of Cypress common stock.

(d) Subsequent to execution of the Cypress-WCI agreement, WCI will have 100% control of Cypress, and Harris, Harris, and Greene will have neither de jure nor de facto control over WCI. Irving B. Harris will be neither an officer nor a director of WCI or any of its subsidiaries. Although Irving B. Harris and his associates will, immediately upon consummation of the merger own in an excess of 1% of WCI's voting stock, they will sell a portion of such holdings pursuant to a secondary offering expressly provided for in the merger agreement and will thereafter hold less than 1% of WCI voting stock. It is contemplated that Irving B. Harris' sale of WCI stock will take place within two weeks after consummation of the Cypress-WCI agreement.[9]

6. With regard to the cable systems serving Taft, Taft Heights, South Taft, Ford City, and Victorville, California; DeKalb and Sycamore, Illinois; and Warsaw, Winona Lake, and Kosciusko County, Indiana, the petitioners state that:

(a) The Taft, Taft Heights, South Taft, Ford City, and Victorville systems are owned by Continental Transmission Corporation, a WCI subsidiary, and lie within the predicted Grade B contour of Station KBAK–TV in which Cypress principals have interests (see paragraph 5(b) supra). None of them, however, will be an officer or director of Continental Transmission or have any involvement in day-to-day operation of the television station. Diminution of available program choice from diverse and antagonistic sources will be minimal since (1) only the Victorville system is required to originate programming, and (2) at least five television broadcast stations in addition to KBAK–TV place predicted Grade B or better signals over Taft, Taft Heights, South Taft, Ford City, and Victorville.

(b) Both the DeKalb and Sycamore systems are owned by a subsidiary of WCI's Continental Transmission Corporation, and lie within the predicted Grade B contour of Station WSNS–TV, Chicago, Illinois, which is owned by Video 44, A Joint Venture, which, in turn, is owned 50% by HarriScope of Chicago, Inc. Cypress principals have no involvement in the cable facilities or in the day-to-day operation of the station. And a number of television broadcast stations, in addition to WSNS–TV, place predicted Grade B or better signals over the cable system communities.

(c) Cypress' cable operation at Warsaw and Winona Lake and parts of Kosciusko County, Indiana, lies within the predicted Grade B contour of Station WKJG–TV, Fort Wayne, Indiana. The principals of WKJG–TV are WCI board members Alfred R. Stern and Raymond Armstrong together with certain officers of TeleVision Communications, Inc. (a WCI subsidiary). No reduction in program-source diversification will occur since (1) the cable system operation (which serves fewer than 3,500 subscribers) originates no programming, and (2) in any event four television broadcast stations in addition to WKJG–TV place predicted Grade B or better signals over the cable service areas.

7. Having considered the foregoing, the Commission is satisfied that the balance of equities in this case favors grant of WCI and Cypress' joint request for temporary waiver of Section 76.501 of the Rules. The elements leading to this judgment are that: (a) in *some* of the communities, the transfer of control of cable systems to WCI

[8] Their stock interests in HarriScope Broadcasting are stated as: I. B. Harris, 31.3%; B. I. Harris, 9.4%; J. B. Greene, less than 1%.

[9] At the same time, it is noted that Cypress' present officers, including Burt I. Harris, president; Leon Papernou, executive vice-president, and Jerry B. Greene, vice-president-finance, may continue to manage Cypress as servants of its parent corporation, WCI; that Greene is expected to resign as an officer of HarriScope Broadcasting to become vice-president and treasurer of TeleVision Communications, Inc. (a WCI subsidiary); and that HarriScope Broadcasting (which now has a less than 1% interest in Cypress) will, as a result of the exchange of stock, acquire a de minimis interest in WCI.

will actually reduce the degree of local system-station cross-interest during the remainder of the divestiture grace period; and (b) in *all* of the communities, (1) the duration of the waiver is by now quite small, (2) the transfers of control of the few systems in question will not significantly detract from the purposes of Section 76.501 of the Rules and are but minor incidents of a larger transaction which hopefully will generate substantial financial resources needed "to get cable moving so that the public may receive its benefits," *Cable Television Report and Order in Docket No. 18397*, 37 F.R. 3259 (February 12, 1972), and (3) in these circumstances, denial of a temporary waiver would threaten the petitioners with an unjustifiable financial hardship. Nonetheless, we note that no tax certificate will be issued by the Commission with respect to the termination through divestiture of any cross-interests created wholly de novo as a result of WCI's acquisition of control of Cypress. Compare *Suburban Broadcasting Corporation*, FCC 72–769, — FCC 2d — (adopted August 29, 1972).

8. Accordingly, IT IS ORDERED, That Section 76.501 of the Rule IS WAIVED with respect to the following facilities affected by the prospective transfer of control of Cypress Communications Corporation to Warner Communications Inc.: (1) cable television systems at Palm Springs, Bakersfield and environs, Shafter, Oildale, Wasco, McFarland, Delano, Taft, Taft Heights, South Taft, Ford City, and Victorville, California; DeKalb and Sycamore, Illinois; and Warsaw, Winona Lake, and Kosciusko County, Indiana; (2) Television Broadcast Stations KBAK–TV, Bakersfield, California; WSNS–TV, Chicago, Illinois; and WKJG–TV, Fort Wayne, Indiana; and (3) Television Broadcast Translator Stations K70AL, K77AV, and K73AD, Desert Hot Springs and Palm Springs, California.

IT IS FURTHER ORDERED, That such waiver shall expire on (1) August 10, 1973, or on (2) the 90th day following final Commission action on pending requests for reconsideration of the adoption of Section 76.501 of the Rules, whichever first occurs.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Section 76.501 of our new cable television rules prohibits a cable system from owning or operating a television station whose signals are received in the cable system's service area—an effort to preclude a single organization from controlling more than one major broadcast outlet in a community.

Today the Commission waives this rule in order to help effectuate a merger between Warner Communications, Inc., and Cypress Communications Corporation. Aside from resulting in one of the largest cable-broadcast operations in the country, this merger will spawn numerous instances of the sort of cross-ownership against which section 76.501 is specifically directed.

The majority justifies its waiver on the ground that the cross-ownership will be temporary (at the most, it can last only until August 10, 1973, when the new corporation will have to have divested itself of all its offending interests), and also on the ground that, absent a waiver, this merger could not be consummated without creating some risks to the Warner and Cypress stockholders.

The majority has given far too little weight to the purposes underlying section 76.501. It has shown far too little concern for the goal of diversified media control and the public benefits which would inure from such diversification. In doing so, the majority has refused to abide by its own rules, rules which were devised after years of careful study.

And so, Warner and Cypress receive the same favored treatment we agreed to afford cable-broadcast conglomerates which existed prior to the date the Commission first passed its cross-ownership rules. Those previously existing systems were given a grace period during which to divest—until August 10, 1973—because the Commission believed that immediate retroactive application of the rules would be economically disruptive.

I can find no good reason for offering such a grace period to a cable-broadcast conglomerate which is only now being contemplated. Under our rules, both Warner and Cypress should be forced to divest themselves of their offending interests *before* they consummate their merger.

The majority prefers to erase the risks inherent in divestiture, to favor the Warner and Cypress stockholders at a high cost both to the public and to the Commission's own rules. I dissent.

F.C.C. 72-767

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WESTERN COMMUNICATIONS, INC. (KORK-TV) LAS VEGAS, NEV. For Renewal of License	Docket No. 19519 File No. BRCT-327
LAS VEGAS VALLEY BROADCASTING CO., LAS VEGAS, NEV. For Construction Permit for New Television Broadcast Station	Docket No. 19581 File No. BPCT-4465

ORDER

(Adopted August 29, 1972; Released September 1, 1972)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND REID ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission has before it for consideration: (a) the application (BRCT-327) of Western Communications, Inc. (Western), for renewal of its license for station KORK-TV, channel 3, Las Vegas, Nevada; (b) the application (BPCT-4465) of Las Vegas Valley Broadcasting Co. (Valley), for a construction permit for a new television broadcast station to operate on channel 3, Las Vegas, Nevada; (c) a "Settlement Agreement" and related materials filed March 9, 1972, by Western and Valley; and (d) a letter filed June 22, 1972, by Valley requesting that its application be designated for comparative hearing with Western's license renewal application for station KORK-TV.

2. By Order (FCC 72-503) released June 12, 1972, we designated for hearing, on a qualifications issue, the license renewal application (BRCT-327) of station KORK-TV. We noted that while Valley had filed a competing application for operation on channel 3, Las Vegas, Western and Valley had also filed an agreement looking toward a merger of the two companies. The merger agreement specified that either party might terminate the agreement if any application covered by the agreement was designated for hearing. In view of the terms of the agreement, we provided that if it was terminated by either party, and if Valley indicated that it wanted to prosecute its application through the hearing, we would then issue an Order designating that application for hearing for comparative consideration with the KORK-TV license renewal application. On June 22, 1972, Valley filed a letter indicating that it had terminated the merger agreement and requesting that its application be designated for comparative hearing.[1]

[1] Valley and Western are in dispute as to whether Valley can properly terminate the settlement agreement at this time. However, this is a private matter to be resolved between the parties and the action we take today is not intended as a determination of this question.

Therefore, we shall dismiss the "Settlement Agreement" as moot and designate Valley's application for hearing in a consolidated proceeding in Docket No. 19519.

3. Las Vegas Valley Broadcasting Co. is qualified to construct, own and operate the proposed new television broadcast station and except as indicated by the issues set forth below, Western Communications, Inc., is qualified to own and operate television broadcast station KORK–TV. The applications are, however, mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference. The Commission is, therefore, unable to make the statutory finding that a grant of the applications would serve the public interest, convenience and necessity, and is of the opinion that they must be designated for hearing in a consolidated proceeding on the issues set forth below.

4. Accordingly, IT IS ORDERED, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING IN DOCKET NO. 19519, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to the application of Western Communications, Inc.:

(a) Whether the licensee engaged in fraudulent billing practices in violation of section 73.1205 of the Commission's Rules and Regulations, by certifying to the National Broadcasting Company in certain documents that the licensee broadcast certain network programs in their entirety, including commercial content, whereas the licensee had deleted certain network commercial advertisements in a programs certified as having been broadcast in their entirety:

(b) Whether in the course of the Commission's inquiry the licensee made misrepresentations to the Commission or was lacking in candor regarding its policies or practices in joining network programs after their beginning, leaving network programs before their end, or extending network station or commercial breaks so as to affect the content of network programs.

(c) Whether in light of the evidence adduced under the preceding issues, Western Communications, Inc., is qualified to remain a licensee of the Commission.

(d) To determine in the event that it is concluded that Western Communications, Inc., is qualified to remain a licensee of the Commission, what impact, if any, the evidence adduced under issues 1(a) and 1(b) would have upon its comparative evaluation.

2. To determine which of the proposals would better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. IT IS FURTHER ORDERED, That the specification of issues herein SHALL SUPERSEDE the specification of issues in the Commission's Order (FCC 72–503) released June 12, 1972, in this proceeding.

6. IT IS FURTHER ORDERED, That the Broadcast Bureau proceed with the initial presentation of the evidence with respect to issues 1(a) and 1(b), and that Western Communications, Inc., and Las

Vegas Valley Broadcasting Co. then proceed with their evidence. The burden of establishing that it possesses the requisite qualifications to be and to remain a licensee of the Commission and that a grant of the application would serve the public interest, convenience and necessity shall be on Western Communications, Inc.

7. IT IS FURTHER ORDERED, That the "Settlement Agreement" filed by Western Communications, Inc., and Las Vegas Valley Broadcasting Co. IS DISMISSED.

8. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, Las Vegas Valley Broadcasting Co., pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the receipt of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That Las Vegas Valley Broadcasting Co., pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, shall give notice of the hearing within the time and in the manner prescribed in such rule and shall advise the Commission thereof as required by section 1.594 of the rules.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-243

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WTAR RADIO-TV CORP. (WTAR-TV), NORFOLK, VA. For Renewal of Broadcast License	Docket No. 18791 File No. BRCT-54
HAMPTON ROADS TELEVISION CORP., NORFOLK, VA. For Construction Permit for New Television Broadcast Station	Docket No. 18792 File No. BPCT-4281

MEMORANDUM OPINION AND ORDER

(Adopted August 31, 1972; Released September 1, 1972)

BY THE REVIEW BOARD:

1. The above-capitioned mutually exclusive applications for renewal of a television broadcast license in Norfolk, Virginia and for a new television station in Norfolk, Virginia, respectively, were designated for hearing by Order, FCC 70-97, released January 27, 1970. The Review Board now has before it for consideration an appeal, filed by WTAR Radio-TV Corporation (WTAR-TV) on May 31, 1972, from an interlocutory ruling of the Hearing Examiner made orally on the record May 23, 1972 (tr. 250).[1]

2. Among the issues designated by the Commission in this proceeding was an inquiry to determine whether there is a reasonable possibility that the tower height and location proposed by Hampton Roads Television Corporation would constitute a menace to air navigation. Hampton Roads subsequently amended its application to specify a new proposed antenna site. The order of proceeding which was originally scheduled by the Examiner was to, first, hear the affirmative case on WTAR-TV's qualifying issues; second, hear the affirmative case on Hampton Roads qualifying issues; and third, hear the affirmative cases on the standard comparative issue. However, when the hearing commenced on May 23, 1972, counsel for Hampton Roads advised the presiding officer that FAA clearance of its proposed site had not been forthcoming and that certain oppositions to that site had been filed. Consequently, Hampton Roads indicated, it had located a new site which it believed would obviate the necessity for hearing on the air hazard issue; thus, Hampton Roads did not intend to proceed with its showing as to the air hazard question on its then proposed site. Counsel also stated that Hampton Roads intended to file an amendment which would specify a newly proposed antenna site which

[1] The Board also has before it oppositions, filed by the Broadcast Bureau on June 5, 1972, and Hampton Roads Television Corporation on June 7, 1972.

would eliminate the hazard to air navigation question.[2] After considerable argument and discussion, the Hearing Examiner ruled that he would defer hearing on the air hazard issue until the record was completed as to all other issues. He also advised counsel for Hampton Roads that if he did not come forward with FAA clearance at that point, "things would not go well with his applicant". The Examiner also authorized counsel for WTAR–TV to appeal his ruling on this matter, if he wished to do so. The instant appeal was filed by WTAR–TV pursuant to that authority.

3. WTAR, in its appeal, contends that the Examiner's ruling which deferred the hearing on the air hazard issue until the record is completed on all other issues is an abuse of his discretion. It is WTAR's position that in cases such as this, where mutually exclusive applications are being considered and where there are basic qualifications issues as to each applicant, the qualifications issues must be resolved before consideration of the comparative issues, and that the Examiner's failure to proceed in this fashion is reversible error. Both the Bureau and Hampton Roads oppose this appeal, urging that under the Commission's Rules the presiding Examiner is given power to regulate the course of hearing and to designate the order of presentation in hearing cases; and that, in view of the circumstances of this case, the Examiner did not abuse the discretion delegated to him.

4. The instant appeal from the Examiner's ruling will be denied. Section 1.243 [3] of the Commission's Rules clearly gives the Examiner power to regulate the course of the hearing and, in the absence of a persuasive showing of abuse of his discretion, the Review Board will not disturb his ruling in this regard. WTAR has cited no authority for its contention that the Examiner is required to hear the evidence with respect to all of the qualifying issues before he proceeds to the comparative issues in such a proceeding. Nor are we aware of any such authority. In view of Hampton Roads' declaration that it would amend its application to specify a site that presented no questions of hazard to air navigation and the Examiner's cautionary remarks to counsel for Hampton Roads, the Examiner's decision to delay hearing on the air hazard issue is clearly not an abuse of his discretion.

5. IT IS ORDERED, That the appeal from interlocutory ruling of the Hearing Examiner, filed May 31, 1972, by WTAR Radio-TV Corporation (WTAR–TV), IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[2] On June 5, 1972, Hampton Roads filed a petition for leave to amend and an amendment which specified a new proposed antenna site. That petition was granted and the application amended by the Hearing Examiner's Order, 72M–790, released June 16, 1972.

[3] § 1.243 Authority of presiding officer.

From the time he is designated to preside until issuance of his decision or the transfer of the proceeding to the Commission or to another presiding officer, the presiding officer shall have such authority as is vested in him by law and by the provisions of this chapter, including authority to: * * *

(f) *Regulate the course of the hearing*, maintain decorum, and exclude from the hearing any person engaging in contemptuous conduct or otherwise disrupting the proceedings; * * *